IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

LINDSEY C BARTON Claimant **ZAHN STEVE ET AL** Employer	**APPEAL 19A-UI-01056-DB-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 01/13/19** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 5, 2019 (reference 01) unemployment insurance decision that held claimant ineligible for unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 21, 2019. Claimant, Lindsey C. Barton, participated personally. The employer did not participate.

ISSUE:

Did claimant voluntarily quit her employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time as an assistant manager at the employer's fast food restaurant. She began working for the employer in 2013 and voluntarily quit on January 12, 2019 when she tendered her verbal resignation. Tyler Harris was her immediate supervisor at the time of her separation from employment.

Claimant sustained an ankle injury and received written work restrictions from lifting more than 20 pounds. Claimant gave her employer a copy of the work restrictions in 2018. As such, the employer allowed her to refrain from unloading the truck, which consisted of moving heavy boxes weighing more than 20 pounds.

When Mr. Harris became claimant's supervisor on January 1, 2019, he began requiring the claimant to lift boxes weighing more than 20 pounds. At her direction, claimant's co-worker told Mr. Harris that the claimant would quit if he continued requiring her to lift heavy boxes in violation of her medical restrictions. Each time the claimant was required to unload the truck there were approximately 90 boxes that weighed over 20 pounds each. Claimant was required to unload the truck on approximately six separate occasions in 2019 prior to her voluntarily quitting. This caused her ankle pain and trouble standing on days that she lifted boxes over 20 pounds.

Claimant texted Mr. Harris on January 12, 2019 stating that she was going to quit. Mr. Harris told her that he wished she would not quit but no accommodation was established by Mr. Harris to ensure that she would not be required to lift more than her work restrictions allowed. Claimant then tendered her verbal resignation to Mr. Harris.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds that the claimant voluntarily quit with good cause attributable to the employer.

Iowa Code §96.5(1) provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, the claimant voluntarily quit her employment. As such, claimant must prove that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

Iowa Admin. Code r. 871-24.26(2) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (2) The claimant left due to unsafe working conditions.

Iowa Admin. Code r. 871-24.26(4) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (4) The claimant left due to intolerable or detrimental working conditions.

Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa

Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005). "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer."). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, claimant was not required to give the employer any notice with regard to the intolerable or detrimental working conditions prior to her quitting. However, claimant must prove that her working conditions were intolerable, detrimental, or unsafe.

It is reasonable to the average person that a person should not have to work in violation of her written medical work restrictions. Claimant has proven that her working conditions were intolerable, detrimental and unsafe to her. Thus, the separation was with good cause attributable to the employer. As such, benefits are allowed, provided she is otherwise eligible. The employer's account may be charged for benefits paid.

DECISION:

The February 5, 2019 (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

_____
Dawn Boucher
Administrative Law Judge

_____
Decision Dated and Mailed

db/rvs