

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHARILYN ERVIN
Claimant

WAUKEE COMMUNITY SCHOOL DISTRICT
Employer

APPEAL 20A-UI-13453-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/07/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On October 29, 2020, Sharilyn Ervin (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated October 28, 2020 (reference 03) that denied benefits based on a finding claimant voluntarily quit work on August 28, 2020 because she was dissatisfied with work conditions.

A telephone hearing was held on December 15, 2020. The parties were properly notified of the hearing. A hearing was held at that time. The claimant participated personally. Lilly Lomica participated on behalf of the employer.

Claimant's Exhibit 1 and 2 was admitted.

ISSUE(S):

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

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

Claimant worked for employer full-time as a special needs associate beginning August 19, 2019. Claimant's last day physically working on the job was March 2020. The school was shut down from mid March 2020 until June 4, 2020 due to the pandemic. Claimant continued to be paid until June 4, 2020. Claimant resigned on that day.

Claimant resigned due to interactions with a special needs student that she felt were inappropriate. The student would use profanity and racial slurs toward claimant. Claimant felt she couldn't work in that environment any longer and resigned. Claimant said she complained to some district staff but the student's behavior continued. The school offered to transfer claimant to the high school, however, she chose to resign. Continuing work was available to the claimant. Her job was not in jeopardy.

Claimant has not been employed elsewhere since resigning.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated September 4, 2020 (reference 01) that denied benefits is AFFIRMED.

Iowa Code section 96.5(1)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25 provides in relevant part:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

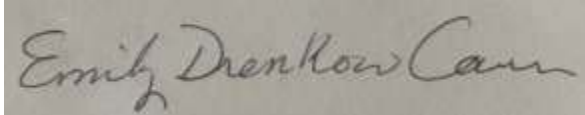
As an initial matter, the administrative law judge finds claimant resigned rather than being discharged. Claimant had the option of maintaining the employment relationship and made a choice not to. The question then is whether claimant quit for a good cause reason attributable to employer. The administrative law judge finds she did not and is therefore disqualified from benefits.

Claimant resigned following an interactions with a special needs student that she felt were inappropriate. Claimant was frustrated with the student's behavior and use of profanity. Claimant had the option of being transferred to a different school, but instead, claimant quit. There are no documented complaints brought by the Claimant about the working situation with the student involved.

The administrative law judge understands claimant's frustration and her reasons for resigning. However, a reasonable person would not have felt the working conditions so intolerable or detrimental as to justify resignation, particularly without first raising any issues with the supervisors and providing an opportunity to correct them. These reasons are presumed to be without good cause attributable to employer and the administrative law judge finds they were without such good cause here. As such, claimant's separation from employment was disqualifying and benefits must be denied.

DECISION:

The decision dated October 28, 2020 (reference 03) that denied benefits is **AFFIRMED**. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

December 23, 2020
Decision Dated and Mailed

ed/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.