

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHARLEY A FOGELMAN
Claimant

TERRY LOCKIE & ASSOCIATES PC
Employer

APPEAL 15A-UI-03100-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/22/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 11, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the claimant's separation. The parties were properly notified about the hearing. A telephone hearing was held on April 17, 2015. The claimant participated. The employer participated through Terry Lockie. Dawn Mikkelson and Bev Reed also testified for the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a billing and officer manager and was separated from employment on February 13, 2015, when she resigned without notice.

In fall 2014, the claimant's son had a stroke. As a result, the claimant resigned but ended up returning to work shortly thereafter. The claimant had difficulty at times balancing her work responsibilities in light of the understandable stress and ongoing care for her son. The employer accommodated the claimant for time off to take him to therapy and appointments as needed. In the month of January, the claimant was delayed in sending out the billings and statements from the prior month. Consequently, the employer did not have its usual cash flow that it relied upon based on the claimant's mailing duties. In the last few days leading to the claimant's separation, three events unfolded, contributing to the claimant's decision to resign on February 13, 2015, via email and without notice. Continuing work was available.

The employer's rent check was late and the claimant was asked to deliver it to the landlord. Ms. Lockie suggested to the claimant that she explain to the landlord about her son's stroke, in response to things running behind. The claimant took Ms. Lockie's suggestion to mean she should lie and say the rent check was late due to her son's stroke, which had happened in prior months. This upset the claimant but she did reference her son's stroke when delivering the check.

The next incident that occurred was with regarding to a client calling to make a payment. The claimant was advised to charge the client twice, pursuant to a court order. The client had a conversation with the employer and had not received the prior billing statement from the employer, which was part of the claimant's responsibilities. The claimant felt uncomfortable taking out a second payment in light of an agreement made between the employer and client, that did not include the claimant.

There was also an incident involving holding overtime wages of another employee at Ms. Lockie's request. The employer was short funds for payroll. The employer had lent the employee in question a cash advance and they agreed upon the overtime wages being paid back to the employer for the advance. The claimant viewed the employer's actions as illegal. Prior to resignation, the claimant did not talk with management about any ongoing concerns about work conditions or management. Had the claimant had issues about the practices she questioned as professional or ethical, she could have confronted Ms. Lockie, who managed the administrative parts of business or Ms. Mikkelson, who managed operations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without 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.

Iowa Admin. Code r. 871-24.25(21) and (22) provide:

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 § 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 § 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:

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

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 recently 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). The claimant has failed to present credible evidence that the employer's conduct was illegal or intolerable in her final days of employment and would permit an immediate resignation under Iowa law.

Absent intolerable or unsafe working conditions, the claimant who has work issues or grievances must make some effort to provide notice to the employer to give the employer an opportunity to work out whatever issues led to the dissatisfaction. Failure to do so precludes the employer from an opportunity to make adjustments which would alleviate the need to quit. *Denvy v. Board of Review*, 567 Pacific 2d 626 (Utah 1977). Had the claimant discussed her concerns with management, she may have learned more information, to which she was not generally privy to, that explained the entire situation. Cognizant of the claimant's balancing of her family needs and her job, based on the evidence presented at the hearing, the administrative law judge concludes the claimant voluntarily quit because she did not agree with the supervisor about various issues. This was not for a good-cause reason attributable to the employer. Benefits are denied.

DECISION:

The March 11, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css