

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHERINE M SIMMONS
Claimant

BREMER COUNTY AUDITOR
Employer

APPEAL 20A-UI-08171-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/26/20
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On July 2, 2020, Katherine Simmons (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated June 30, 2020 (reference 02) that determined claimant was disqualified from receiving unemployment insurance benefits due to voluntarily quitting work on March 23, 2020 for reasons not attributable to employer.

A telephone hearing was held on September 1, 2020. The parties were properly notified of the hearing. The claimant participated personally. Bremer County Auditor (employer/respondent) participated by Sheriff Dan Pickett and was represented by attorney Ann Smisek.

Claimant's Exhibit 1 and Employer's Exhibit A were admitted. Official notice was taken of the administrative record.

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 as a full-time jailer beginning August 26, 2019. Claimant resigned effective March 23, 2020. Claimant's resignation was due to her moving to another area and her deciding that the commute to employer would be too far from her new residence.

After her resignation, claimant was offered and accepted a position with another employer. Claimant was subsequently laid off from that employment after several weeks. She earned approximately \$1,800.00 in that employment. She then worked for another employer for approximately two weeks at a salary of \$35,000.00, earning approximately \$1,350.00 during that time. Claimant earned approximately \$3,150.00 in insured wages since her resignation from employer. Claimant's weekly benefit amount is \$425.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated June 30, 2020 (reference 02) that determined claimant was disqualified from receiving unemployment insurance benefits is AFFIRMED. Claimant voluntarily quit for reasons not attributable to employer. Claimant is disqualified from receiving benefits from the date of separation and continuing until she earns wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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:

(2) The claimant moved to a different locality.

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).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer. Claimant resigned because she was moving to a different locality. This reason is presumed to be without good cause attributable to the employer, and the administrative law judge finds it is without good cause here.

While claimant was subsequently employed after her resignation, she did not resign for the sole purpose of accepting other employment. She also has not yet earned insured wages equal to ten times her weekly benefit amount, \$4,250.00. As such, claimant is disqualified from the date of resignation, March 23, 2020, and continuing until she earns wages for insured work equal to ten times her weekly benefit amount.

The administrative law judge wishes to note the parties seem to agree that claimant should be eligible for benefits with regard to her layoff from her subsequent employer and that the employer here should not be charged. The subsequent employer did not protest claimant's claim for benefits. However, applicable law dictates that claimant is disqualified from all benefits due to her disqualifying separation from employer, even though that was not her last employer and even though her separation from her most recent employer does not appear to be disqualifying. Benefits must be denied.

DECISION:

The decision dated June 30, 2020 (reference 02) that determined claimant was disqualified from receiving unemployment insurance benefits is AFFIRMED. Claimant voluntarily quit for reasons not attributable to employer. Claimant is disqualified from receiving benefits from the date of separation and continuing until she earns wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

September 2, 2020
Decision Dated and Mailed

abd/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>.