

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACKLYN KAPSCH
Claimant

APPEAL 20A-UI-05496-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAVORITE HEALTHCARE STAFFING INC
Employer

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant Jacklyn Kapsch filed an appeal from an April 13, 2020 (reference 01) unemployment insurance decision that denied based upon her voluntarily quitting her employment with Favorite Healthcare Staffing Inc. (“Favorite”) on March 2, 2020. Notices of hearing were mailed to the parties’ last known addresses of record for a telephone hearing scheduled for July 7, 2020. Kapsch appeared and testified. Valerie Carnes appeared and testified on behalf of Favorite. Exhibit 1 was admitted into the record. I took administrative notice of Kapsch’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUES:

Was the claimant’s appeal timely?

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

Kapsch commenced her employment as a temporary staff/certified nursing assistant with Favorite on August 18, 2019. Kapsch reported she accepted assignments within a 50-mile radius of her home. Kapsch reported to Corlin, a supervisor located in Iowa.

Kapsch worked for Favorite on February 10, 2020. She was scheduled to work on February 18, 2020. Kapsch called in and cancelled her shift because she was ill. On February 21, 2020, Favorite offered Kapsch work. She again called and stated that she was sick. Kapsch’s father experienced a medical emergency and she called and reported she would not be at work on February 22, 2020. On February 24, 2020, Kapsch contacted Favorite and stated she needed to take some time off for health and family issues, noting her father was in the hospital.

Kapsch was going through a divorce. On March 2, 2020, Kapsch contacted Favorite and reported she was moving to Illinois due to incidents with her husband. Favorite offered Kapsch work on March 14, 2020, March 15, 2020, and April 4, 2020. After moving to Illinois, Kapsch had to transfer her registration to Illinois before she could work in Illinois. Kapsch did not call Favorite back to accept the assignments.

Carnes testified Favorite believed Kapsch had voluntarily quit her position because she did not provide a weekly and regular update regarding her status. Carnes reported Kapsch received a copy of the policy during the application process. Favorite did not produce a copy of the policy at hearing or an acknowledgement of the policy from Kapsch at the time of the hearing. Kapsch testified she kept her supervisor, Corlin, updated about her status during the period she was off work.

Kapsch returned to work at Favorite on April 7, 2020. At the end of April Kapsch was off work due to testing for Covid-19. Kapsch's medical provider released her to return to work on May 21, 2020. This appeal concerns an alleged quit that occurred on March 2, 2020, before the Covid-19 issues Kapsch discussed. This appeal does not involve her leave related to Covid-19. As of the date of the hearing Kapsch was working for Favorite.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. . . .

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision is presumptive evidence of the date of mailing, unless otherwise corrected immediately below that entry. *Gaskins v. Unemployment Compensation Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873 (Iowa 1976). Kapsch testified she did not received the decision in this case because she was having problems with her mail. I find her appeal was timely under the facts of this case.

Iowa Code section 96.5(1)d 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:

d. The individual left employment because of illness, injury, or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury, or

pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

The Iowa Supreme Court has held a "voluntary quit" means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires "an intention to terminate the employment relationship accompanied by an overt act carrying out the intent." *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). "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). The 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).

Kapsch left for compelling personal reasons in February 2020, in part to attend to her ill father. She did not return to work until April 7, 2020. 871 Iowa Administrative Code 24.25(20) and (23) 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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

24.25(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

24.25(23) The claimant left voluntarily due to family responsibilities or serious family needs.

871 Iowa Administrative Code 24.26(8) also 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:

24.26(8) The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or by marriage.

24.26(16) The claimant left employment for a period not to exceed ten working days or such additional time as was allowed by the employer, for compelling personal reasons and prior to leaving claimant had informed the employer of such compelling personal reasons, and immediately after such compelling personal

reasons ceased to exist or at the end of ten working days, whichever occurred first, the claimant returned to the employer and offered to perform services, but no work was available. However, during the time the claimant was away from work because of the continuance of this compelling personal reason, such claimant shall be deemed to be not available for work.

Kapsch did not return to work after her situation with her father changed. In March 2020, Kapsch again refused a work assignment because she had moved to Illinois for a personal reason unrelated to her father's health condition. While she was off work Favorite had work assignments available for Kapsch and she refused the assignments. Kapsch returned to work on April 7, 2020. The reasons why Kapsch was absent from work had nothing to do with her employment. Kapsch was absent for more than ten days. Favorite offered her employment on March 14, 2020, and March 15, 2020, after she moved to Illinois. Kapsch did not accept the employment. Kapsch has not established she left Favorite in March 2020 for good cause attributable to Favorite. This decision concerns the period of March 14, 2020 until Kapsch return to work on April 7, 2020. The issues related to Covid-19 occurred later in time and are not addressed in this decision.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The April 13, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is affirmed. The claimant voluntarily quit her employment without good cause attributable to the employer. Unemployment insurance benefits are denied until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Pandemic Unemployment Assistance (“PUA”) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (“PUA”) that may provide up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive an additional \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation program if the individual is eligible for PUA benefits for the week claimed. This decision does not address whether the claimant is eligible for PUA. If the claimant wishes to receive PUA benefits, the claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below:

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify 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 under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.** This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.



Heather L. Palmer
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July 17, 2020
Decision Dated and Mailed

hlp/mh