

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

KERRY APA
Claimant

APPEAL NO: 13A-UI-12024-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

OC: 09/22/13
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 17, 2013, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on November 19, 2013. The claimant participated in the hearing. Brandi Tiesman, Director of Human Resources; Lisa Rogers, Supervisor of Customer Service; and Megan Clark, Human Resources Coordinator participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service representative for Genesis Health System from May 4, 2009 to September 20, 2013. She submitted her two-week resignation notice September 4, 2013, effective September 20, 2013.

The claimant's son has serious medical needs which require a great deal of attention and intervention on her part. She applied for and was granted intermittent Family and Medical Leave (FML) and used it over the last two years of her employment. When she used the FML faster than she earned it she would receive a corrective action disciplinary letter regarding her attendance.

The claimant received a final written warning about her attendance June 13, 2013, and by September 4, 2013, she determined she had just used more FML than she had available and that her time off would count against her and, she believed, result in her termination from employment. If the employer discharges an employee, she is not eligible for rehire but if she resigns she remains in good standing.

The claimant did not have any reported absences or incidents of tardiness between June 13 and September 4, 2013, but just before that date the claimant was asked to cover Customer Service Supervisor Lisa Rogers' phone when she had to leave early and was told to retrieve messages from her voice mail and take care of everything she could and leave the rest for Ms. Rogers. While doing so the claimant heard a message for Ms. Rogers from Customer Service Manager Patty Finnigan stating she had spoken to the claimant and while she was sympathetic about her situation she should probably look for other work because she could not work the required hours in her position as a customer service representative. The claimant "knew (she) could not hang onto (her) job" and consequently submitted her two-week resignation notice in hopes of preserving an opportunity to work for the employer again in the future.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code section 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant voluntarily resigned her position in anticipation of her potential termination so she could remain in good standing with the employer and possibly return to work there in the future. She had exhausted her intermittent FML caring for her special needs child but still had medical appointments as well as unpredictable situations that would cause her to need further time off. While the employer had issued the claimant a final written warning about her attendance in June 2013, it had not taken the step of terminating the claimant's employment at the time she submitted her resignation notice. Although the claimant had good personal reasons for leaving her employment, she is required to prove good cause attributable to the employer for her leaving. In this case, the claimant's reasons for leaving cannot be attributed to the employer as unlawful, intolerable or detrimental working conditions as required by Iowa law before an individual who voluntarily quits her position is allowed to receive unemployment insurance benefits. While not unsympathetic to the claimant's plight, under these circumstances, the administrative law judge must find the claimant left her employment without good cause attributable to the employer. Therefore, benefits must be denied.

DECISION:

The October 17, 2013, reference 01, decision is affirmed. The claimant voluntarily left her 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css