

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAMMY J MILLER
Claimant

CENTRAL IOWA KFC INC
Employer

APPEAL 21A-UI-15983-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/27/20
Claimant: Appellant (1)

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On July 19, 2021, the claimant/appellant filed an appeal from the July 15, 2021, (reference 02) unemployment insurance decision that disallowed benefits based on claimant voluntarily quitting for personal reasons. The parties were properly notified about the hearing. A telephone hearing was held on September 13, 2021. This appeal was held in conjunction with appeal 21A-UI-15982-CS-T. Claimant participated at the hearing. Claimant was also represented by non-attorney representative Jon Geyer. Claimant called as witnesses Wayne Hall and Cory Miller. Employer participated through attorney William Reasoner. The employer called as a witness area coach, Marshall Brandt. Exhibits 1 and 2 were admitted into the record. Administrative notice was taken of claimant's unemployment benefit records.

ISSUES:

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

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on November 13, 2008. Claimant last worked as a full-time assistant manager. Marshall Brandt is the employer's area coach and at one time was claimant's supervisor.

Claimant last worked for the employer on September 19, 2020. Claimant took FMLA to care for her children while they were out of school due to COVID. The school district was not allowing in person instruction so claimant was not able to work during the time period. Claimant's FMLA leave expired on December 12, 2020. Claimant did not return to work but filed for unemployment insurance. Claimant was denied state unemployment insurance because she was not available to work due to her lack of childcare. Claimant applied for Pandemic Unemployment Assistance (PUA) due to not having childcare for her children. Claimant received PUA from December 27,

2020 through June 12, 2021. Claimant's children returned to in person learning March 1, 2021. Claimant became ill with kidney infection shortly after her children returned to in person learning at school. Claimant was recovered from her kidney infection on March 24, 2021.

Claimant's husband, Cory Miller, also works for the employer. Claimant's husband works at a different location than the claimant. The claimant contacted the employer and asked to be transferred to her husband's restaurant location. The employer denied the claimant's request to transfer because they already had two assistant managers at that branch and did not need another assistant manager at that location.

The employer contacted the claimant on March 16, 2021, and left a message asking the claimant to contact him about her returning to work. The claimant did not return the phone call. The claimant never called the employer to return to work or request to be put back on the schedule. Mr. Brandt asked claimant a couple different times when she would be returning to work and did not receive a response from claimant. Mr. Brandt also asked Mr. Miller when claimant would return to work and Mr. Miller did not provide a response to Mr. Brandt.

On April 19, 2021, Mr. Brandt was at the claimant's residence dropping off paperwork to Mr. Miller. While Mr. Brandt was at the claimant's residence she brought her restaurant keys out to Mr. Brandt and gave them to him. Claimant told him that she was not quitting but that she was turning in the keys because there was an issue with missing money at the restaurant location that claimant worked and she did not want to be accused of taking the money. Claimant wanted to remove the possibility of her having access to the store so she could not be accused of stealing the missing money. Mr. Brandt accepted the keys.

On April 21, 2021, the employer sent claimant a letter informing her that they were taking her turning in the keys to the restaurant as her not returning to work. The employer interpreted it to mean she was voluntarily terminating her employment. Claimant received the letter on April 27, 2021. Claimant did not contact the employer to discuss the letter.

Claimant did not have previous disciplinary warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was 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.

Iowa Admin. Code r. 871-24.25(20) provides:

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:

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

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

Claimant originally went on a company approved leave of absence on September 19, 2020. The company approved absence expired on December 12, 2020. Claimant did not return to work because she did not have childcare for her children. On or about March 1, 2021, claimant's children returned to school and child care was no longer an issue for the claimant. Claimant did not return to work or ask to be put on the schedule within ten days of her children returning to school. As of April 27, 2021, when claimant received the letter from the employer, claimant never asked to be put on the schedule. This was almost two months after claimant's children returned to school. Claimant's failure to return to her employment and offer her services within ten days of claimant's children returning to school is an act of voluntarily quitting. Claimant's voluntary quit was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

The issue of claimant's ability to work and availability to work is moot since claimant is denied state unemployment benefits.

DECISION:

The July 15, 2021, (reference 02) unemployment insurance 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.

The issue of claimant's ability to work and availability to work is moot since claimant is denied state unemployment benefits.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

September 17, 2021
Decision Dated and Mailed

cs/kmj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If 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.