

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE R. BURKHEAD
Claimant

APPEAL NO: 17A-UI-08451-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 07/16/17
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 7, 2017, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on September 6, 2017. The claimant participated in the hearing. Selena Humphrey, Administrator; Penny Williams, Business Office Manager; Jody Seddon, DON; and Toni McColl, Employer Representative, 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 dietary services manager for Care Initiatives from December 4, 2015 to July 13, 2017. She voluntarily left her employment by using profanity and walking off the job.

On July 13, 2017, the claimant learned Administrator Selena Humphrey reported her family to the Department of Human Services (DHS) because the claimant repeatedly complained to Ms. Humphrey through text messages of her fear of her husband and his dog for herself and her children and Ms. Humphrey is a mandatory reporter. The claimant confronted Ms. Humphrey in her office and asked her if she called DHS. Ms. Humphrey stated she did and explained why she did so. The claimant was very angry and left Ms. Humphrey's office but returned 10 to 15 minutes later even more upset and asked why she called DHS. Ms. Humphrey explained it again and the claimant got so loud, Business Office Manager Penny Williams went to Ms. Humphrey's office with her customary pad of paper and pen so she could take notes about what was happening. Ms. Humphrey then told the claimant she was not going to discuss it further and the claimant yelled, "I'm leaving and I don't give a fuck." Ms. Humphrey told the claimant she needed to leave and "not come back with that attitude." She left the office and Ms. Humphrey and Ms. Williams followed her and Ms. Humphrey asked her for her keys. The claimant did not turn her keys over until the group reached the time clock area.

The claimant emailed Ms. Humphrey July 14, 2017, and Ms. Williams was present as a witness. Ms. Humphrey told the claimant she was insubordinate the day before and the claimant asked what she said. Ms. Humphrey said she used the “f-word” and the claimant agreed she said that. Ms. Humphrey stated she would try to find a transfer for the claimant to one of the employer’s sister facilities and the claimant thought that would be an option but wanted Ms. Humphrey to issue a written statement promising the claimant could return to that facility. Ms. Humphrey told the claimant she could not do that as the employer does not offer contracts and she would not know what shifts would be available. The claimant wanted to work 6:00 a.m. to 2:00 p.m. and asked to work the CNA position available at the facility. DON Jody Seddon, who had entered the room, told the claimant that as a department head she is held to a higher standard and she had walked out and used inappropriate language. Ms. Seddon also told the claimant if she let her return immediately as a CNA, other employees will think it is okay to behave in that manner and she feared the claimant’s attendance would still be poor. The claimant asked Ms. Humphrey if she could have the weekend to think about the transfer and Ms. Humphrey agreed. Ms. Williams and Ms. Humphrey made calls to the employer’s sister facilities in the area to ask about the claimant transferring to one of them. The claimant called Ms. Williams back at 2:00 p.m. and said she wanted to come back to her job in Chariton as the dietary services manager. Ms. Humphrey told the claimant it was too soon and regardless she was being demoted and would not be allowed to return as the dietary services manager. At 2:10 p.m. the claimant called back and stated the position at the Westridge facility would not work for her because she needed to be able to take her children to school and pick them up. Ms. Humphrey told the claimant the Osceola facility had a 6:00 a.m. to 2:00 p.m. opening available immediately and the claimant needed to call the facility. The claimant said she wanted to return to Chariton and then she could take her children to school. Ms. Humphrey again told the claimant she could not come back to the Chariton facility at that time. Ms. Humphrey told the claimant she needed an answer about Osceola by Monday. The claimant called Ms. Williams back at 2:15 p.m. and said she wanted Ms. Humphrey to put in writing that she could return to the Chariton facility if she went to Osceola because she “wasn’t going to get stuck there or she could fire her.” At 2:36 p.m. the claimant emailed Ms. Humphrey that if she could not have it in writing that she could return to Chariton, she was going to return to work Monday, July 17, 2017, to perform her job as a dietary services manager. She stated she did not quit but left an environment that was “hostile and uncomfortable.” On July 17, 2017, the claimant called Ms. Humphrey and said “a transfer was not an option” for her. The employer told her when she walked out July 13, 2017, she would go ahead and terminate the claimant’s employment. The claimant said she felt she was being pushed out and Ms. Humphrey stated she considered the claimant to have resigned her position. The claimant said she was leaving a hostile situation.

REASONING AND CONCLUSIONS OF LAW:

The claimant maintains her employment was terminated and the employer believes the claimant voluntarily left her employment. However, the claimant initiated the situation that led to her separation. For that reason, this case will be analyzed as a voluntary leaving of employment.

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 § 96.5-1 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.

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.

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). While the claimant was understandably upset that Ms. Humphrey reported her family to DHS, she provided information to Ms. Humphrey that so concerned her, as a mandatory reporter, she felt she needed to report the situation to DHS. Even though the claimant was upset with Ms. Humphrey, her actions in walking off the job and saying, "I'm leaving and I don't give a fuck" were an overt act of demonstrating her intention to voluntarily quit her job.

The claimant emailed the employer and spoke to Ms. Humphrey by phone later that day and because she indicated she did not want to lose her job, the employer offered her a transfer to one of its sister facilities. The claimant repeatedly insisted that Ms. Humphrey give her a written document stating she could return to the Chariton facility on a date certain but the employer understandably refused to do so. The employer could not offer the claimant a position in the future without knowing what shifts it would have open but more importantly it did not know how the claimant would behave at the other facility and whether her attendance would be acceptable. The employer could not guarantee the claimant a position at the Chariton facility and it was unreasonable for the claimant to insist upon that as a condition of her accepting a transfer. The employer was effectively doing the claimant a favor in trying to arrange a transfer for her. Instead of accepting the employer's offer of a transfer, even one which offered the hours the claimant said she needed, the claimant decided that was not an option. At that point, the claimant basically quit for a second time.

Under these circumstances, the administrative law judge must conclude the claimant voluntarily left her employment without good cause attributable to the employer. Therefore, benefits must be denied.

DECISION:

The August 7, 2017, 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/scn