

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHLEEN RECTOR
Claimant

APPEAL 20A-UI-09657-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACKHAWK LIFECARE CENTER INC
Employer

OC: 03/29/20
Claimant: Appellant (3)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2) – Discharge Due to Misconduct

STATEMENT OF THE CASE:

Claimant Kathleen Rector filed an appeal from an August 12, 2020 (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer, Blackhawk Lifecare Center Inc. (“Blackhawk Lifecare”). Notices of hearing were mailed to the parties’ last known addresses of record for a telephone hearing scheduled for September 22, 2020. Rector appeared and testified. Lisa Pudenz appeared and testified on behalf of Blackhawk Lifecare. Exhibit 1 was admitted into the record. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

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

FINDINGS OF FACT:

On October 2, 2018, Rector commenced full-time employment as a licensed practical nurse with Blackhawk Lifecare. Her immediate supervisor at the end of her employment was Kellie Herrig, the director of nursing. Blackhawk Lifecare operates a residential care facility.

Rector has been diagnosed with bronchitis in the past. She normally has one or two bouts of bronchitis every year, requiring her to take medication. Rector was also diagnosed with diabetes in 2017 and she is seventy-one years old.

When Covid-19 hit, Rector became concerned about her safety and working. Blackhawk Lifecare provided Rector and the other staff with personal protective equipment, including masks, gloves, and gowns. Blackhawk Lifecare also closed down the facility to outside visitors. Rector told the administrator, Jessica List, she was concerned about continuing to work given Covid-19 and her risk of exposure at work. No one was diagnosed with Covid-19 in the facility in March 2020.

On March 29, 2020, Rector told List she was concerned about her safety and that she did not feel comfortable working. List provided Rector with FMLA paperwork. On March 30, 2020, Rector

submitted a medical note stating she should not work until April 27, 2020, due to chronic health concerns and her increased risk if exposed to Covid-19.

Pudenz is the business officer manager and provisional administrator for Blackhawk Lifecare. List resigned on June 15, 2020, and Pudenz became the provisional administrator that day.

Rector provided her FMLA paperwork to the facility in April 2020. List denied her request for FMLA because she did not have a serious health condition or a family member with a serious health condition that needed her assistance with care. The workers at the facility are considered essential workers.

Pudenz testified on May 1, 2020, Rector spoke with List over the telephone regarding the denial of her FMLA request. List told Rector she was an essential health care worker and while she had chronic health issues, she was not currently ill and that she did not qualify for FMLA. List told Rector she could go PRN or voluntarily terminate her employment. Rector did not want to return to work PRN. Pudenz testified Rector resigned, but stated she wanted to return when Covid-19 ended. Rector did not request a leave of absence. Pudenz reported no employees have requested leaves of absences during Covid-19.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides an individual “shall be disqualified for benefits, regardless of the source of the individual’s wage credits:If the individual has left work voluntarily without good cause attributable to the individual’s employer, if so found by the department.” 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).

871 Iowa Administrative Code 24.25(21) 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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

24.25(21) The claimant left because of dissatisfaction with the work environment.

871 Iowa Administrative Code 24.26(2) and (4) provide:

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(2) The claimant left due to unsafe working conditions.

24.26(4) The claimant left due to intolerable or detrimental working conditions.

If the claimant establishes the claimant left due to intolerable or detrimental working conditions, benefits are allowed. Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. The Iowa Administrative Code was amended in 1995 to include an intent-to-quit requirement. The requirement was only added, however, to 871 Iowa Administrative Code 24.26(6)(b), the provision involving work-related health problems. No intent-to-quit requirement was added to 871 Iowa Administrative Code 24.26(4), the intolerable working conditions provision. The Iowa Supreme Court concluded that, because the intent-to-quit requirement was added to 871 Iowa Administrative Code 24.26(6)(b) but not 871 Iowa Administrative Code 24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

“Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988) (“good cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith”); *Shortz v. Iowa Emp't Sec. Comm'n*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer “free from fault”); *Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787, 788 (Iowa 1956) (“good cause attributable to the employer need not be based upon a fault or wrong of such employer”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, the claimant is not required to give the employer any notice with regard to the alleged intolerable or detrimental working conditions prior to quitting. However, the claimant must prove the claimant’s working conditions were intolerable or detrimental.

Rector informed List she did not feel comfortable coming to work after Covid-19 developed. List provided Rector with FMLA paperwork. The facility denied Rector’s request for FMLA because Rector did not need leave for a personal health condition or to care for a family member with a personal health condition. Rector testified Blackhawk Lifecare provided the staff with gloves, masks, and gowns. Rector reported she did not wear a mask when working with patients in the facility before the last day she worked, on March 29, 2020. The facility stopped allowing visitors in March 2020, before her last day. No one contracted Covid-19 in the facility in March 2020. Pudenz testified Rector resigned on May 1, 2020. I do not find Rector has established the working conditions at Blackhawk Lifecare were unsafe, intolerable and detrimental and rose to the level where a reasonable person would feel compelled to quit and do not constitute a good cause reason attributable to Blackhawk Lifecare for Rector to have quit. Rector’s personal medical conditions were not caused or aggravated by Blackhawk Lifecare. Benefits are denied.


DECISION:

Regular Unemployment Insurance Benefits Under State Law

The August 12, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is affirmed as modified. Claimant voluntarily quit the claimant's employment with the employer on May 1, 2020. Unemployment insurance benefits are denied until the claimant has worked in and earned wages for insured work equal to ten times the claimant's weekly benefit amount after the claimant's separation date, and provided the claimant is otherwise eligible.

Pandemic Unemployment Assistance ("PUA") Under the Federal CARES Act

As we discussed during the hearing, 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 ("FPUC") program if the individual is eligible for PUA benefits for the week claimed. The FPUC additional \$600 payment per week ended as of July 25th in Iowa. This means the \$600 weekly additional benefit stopped and at this time, no extension or change to the program has been made by Congress at this time. This does mean that you will see a corresponding decrease in your weekly benefit amount. The FPUC payments are not a state benefit and Iowa is unable to make any changes to the availability of this benefit. If a change takes place to this benefit in the future, IWD will share on the IWD website and social media. 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:



Heather L. Palmer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

September 25, 2020
Decision Dated and Mailed

hlp/mh

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.