

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARAH M MATCHINSKY
Claimant

THE OUTLET INC
Employer

APPEAL NO. 23A-UI-09365-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/10/23
Claimant: Respondent (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On October 3, 2023, the employer filed a timely appeal from the September 26, 2023 (reference 01) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged, based on the deputy's conclusion the claimant voluntarily quit on September 10, 2023 with good cause attributable to the employer. After due notice was issued, a hearing was held on October 18, 2023. Sarah Matchinsky (claimant) participated. Sarah Covemaker represented the employer. Exhibits 1 through 4 were received into evidence. The administrative law judge took official notice of the administrative record of benefits paid to the claimant (DBRO). The administrative law judge took official notice of the SIDES protest and the fact-finding notes for the sole purpose of ruling on whether the employer participated in the fact-finding interview.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Sarah Matchinsky (claimant) was employed by The Outlet, Inc., doing business as Smokin' Joe's, as a full-time store clerk from October 2022 until September 10, 2023, when she voluntarily quit. The workplace is a tobacco and liquor store located on East University Avenue, near the Iowa State Fairgrounds in Des Moines. Ginger Phipps, Store Manager, was the claimant's immediate supervisor. Ms. Phipps quit one day after the claimant quit. The store's hours of operation were 7:00a.m. to 11:00 p.m. Monday through Friday, 8:00 a.m. to 11:00 p.m. on Saturday, and 8:00 a.m. to 10:00 p.m. on Sunday. The claimant generally worked a 3:00 p.m. to 11:00 p.m. shift. From 7:00 p.m. onward the claimant would be the only employee at the store.

On October 10, 2023, the claimant notified Ms. Phipps of her intention to quit the employment and provided Ms. Phipps a signed resignation letter dated October 10, 2023. Ms. Phipps' superiors found the claimant's resignation letter on Ms. Phipps' desk on September 11, 2023, following Ms. Phipps' quit. The claimant raised several concerns in her resignation letter. The

claimant asserted the employer has “gaslighted” employees and had blamed employees for errors that originated with upper management. The claimant expressed dissatisfaction with not receiving a raise during the employment and asserted she had been promised at the start of the employment that she would receive a raise in connection with a 90-day review. The claimant asserted that the employer disregarded employee safety, including threats from disgruntled customers. The claimant cited an act of violence perpetrated by a customer against Ms. Phipps. The claimant asserted she had worked hard for the employer only to be treated as if she did not matter.

The claimant was particularly concerned with workplace safety. There was no barrier between the claimant and the public and no safety enclosure to which the claimant could retreat in the event of a safety emergency. In late August 2023, the claimant was at work when she learned of a robbery that had just occurred at a similar business nearby. The claimant understood that a gun had been involved in that robbery. Smokin’ Joe’s provides a “panic button” for employees to use in emergencies. The panic button alerts a security agency and also alerts law enforcement directly or indirectly. The claimant was unaware of the panic button at the start of the employment but became aware of it during the period of employment. The claimant never used the panic button. However, the claimant had on multiple occasions needed to summon law enforcement to the store. In those instances, the claimant called a non-emergency police number pursuant to the employer’s directive. The claimant had most recently summoned law enforcement to the store in mid-August 2023. Though the employer’s upper management asserts a lack of knowledge regarding the claimant’s safety concerns, the claimant had discussed her concerns with Ms. Phipps. In addition, the presence of the panic button indicates the employer’s awareness of a safety risk.

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:

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 requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Quits due to unsafe work conditions are deemed to be with good cause attributable to the employer. Iowa Admin. Code rule 871-24.26(2).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O’Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the

employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

Quits due to dissatisfaction with the wage when the wage was known at the start of the employment are presumed to be without good cause attributable to the employer. Iowa Admin. Code rule 871-24.25(13).

Quits due to dissatisfaction with the work environment are presumed to be without good cause attributable to the employer. Iowa Admin. Code rule 871-24.25(21).

The weight of the evidence in the record establishes a September 10, 2023 voluntary quit for good cause attributable to the employer. The weight of the evidence establishes unsafe, detrimental working conditions. In light of the several factors set forth in the findings of fact, the claimant was reasonably concerned about her safety in the workplace when she was working alone. The presence of the panic button indicates the employer was aware of the safety risk. The panic button was a half-measure that did not ensure the claimant's safety. A reasonable person would have left the employment under the circumstances. The claimant was not obligated to wait until she was the victim of an assault or more serious crime to establish good cause for the quit based on unsafe and detrimental working conditions. While the safety concerns and related detrimental working conditions were sufficient to establish good cause for the quit, the claimant's dissatisfaction with the wages, "gas lighting" and being blamed for errors would not provide a separate good cause basis for the quit. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The September 26, 2023 (reference 01) decision is AFFIRMED. The claimant voluntarily quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.



James E. Timberland
Administrative Law Judge

October 27, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.