

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTIANA PENNINGTON
Claimant

APPEAL NO. 16A-UI-12122-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANJOY INC
Employer

OC: 10/16/16
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Christiana Pennington filed a timely appeal from the November 3, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Pennington had voluntarily quit on September 27, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on November 30, 2016. Ms. Pennington participated. Kyle Messer represented the employer. Exhibits A and B were received into evidence. The administrative law judge took official notice of the description of bupropion HCL and Hydroxyzine Pamoate contained at www.webmd.com.

ISSUE:

Whether Ms. Pennington's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Christiana Pennington was employed by Anjoy, Inc., d/b/a Fairfield Inn and later as Quality Inn and Suites in Keokuk from 2006 until September 27, 2017, when she voluntarily quit to move to Knoxville and care for her boyfriend. Ms. Pennington lived in Keokuk during the period of the employment. Until September 17, 2016, Ms. Pennington was the full-time executive housekeeper. Ms. Pennington held that position for more than a year. Those duties included supervising other housekeepers to ensure that work was performed as directed, cleaning common areas, and deep cleaning rooms as needed. Prior to May 1, 2016, Ms. Pennington's pay was \$9.00 per hour. Effective May 1, 2016, Ms. Pennington received a three percent raise that increased her pay to \$9.27 per hour. During the last several months of the employment, Kyle Messer, General Manager, was Ms. Pennington's immediate supervisor.

In May 2016, Ms. Pennington was diagnosed with an anxiety disorder and commenced taking prescription psychotropic medication to the address the mental health issue. Ms. Pennington was under stress for reasons that included problems with her ear that led to a surgery, her boyfriend's serious health issues involving his back, and workplace stress.

In June 2016, Ms. Pennington underwent surgery on her ear. Ms. Pennington was released to return to light-duty work within a week or two after her surgery, but suffered from balance issues that impacted her ability to perform some of her assigned duties. Ms. Pennington went off work for another week and then returned to work after being released to perform her full duties. Ms. Pennington continued to struggle with some of her duties due to her balance issues.

In June, Ms. Pennington had a verbal disagreement with the front desk clerk, Dana Voss, when Ms. Voss told Ms. Pennington that a particular room needed deep cleaning. Ms. Voss did not have authority over Ms. Pennington's work. Ms. Pennington brought the matter to Mr. Messer's attention. Ms. Pennington then became upset when Mr. Messer would not prioritize two of her work tasks for her and left that to Ms. Pennington to decide.

Shortly after Ms. Pennington returned from her leave of absence, Mr. Messer spoke to Ms. Pennington regarding a rumor in the workplace that he had a romantic relationship with Ms. Voss. Mr. Messer asked Ms. Pennington and another employee whether they had started the rumor and each denied having started the rumor. Mr. Messer told both that slanderous statements could result in discharge from the employment.

After Ms. Pennington was absent without notice to the employer on July 24, 2016, Mr. Messer spoke to Ms. Pennington the following day about whether she would prefer to step down from her Executive Housekeeper position to something less demanding. Ms. Pennington elected to step down the full-time Executive Housekeeping position to a part-time position. Ms. Pennington cited stress as the basis for her decision to step down. Mr. Messer did not compel Ms. Pennington to step down from the Executive Housekeeping position. Though the change in status was agreed to in July, Ms. Pennington's title and duties did not immediately change. Over the course of weeks, Ms. Pennington trained her replacement. Effective September 18, 2016, Ms. Pennington started her part-time duties that involved 20 hours per week of housekeeping, breakfast duties, and laundry duties as needed. Ms. Pennington assumed that her pay would remain the same. Ms. Pennington did not ask what her new pay would be. The employer's corporate staff, not Mr. Messer, decided the new compensation: \$8.25 per hour for breakfast and laundry duties and \$3.90 per room for housekeeping duties. This pay was at the high end of the range the employer paid for other staff performing similar duties.

Before Ms. Pennington commenced her part-time status, she told Mr. Messer that she was looking for other employment. On September 27, 2016, Ms. Pennington notified Mr. Messer that she was leaving the employment to move to Knoxville. Ms. Pennington's boyfriend lives in Knoxville. Ms. Pennington moved to Knoxville on September 29, 2016. A doctor did not advise Ms. Pennington to leave the employment. Ms. Pennington did not provide the employer with any medical documentation indicating that she had been advised to leave the employment or that she needed accommodations to continue in the employment.

Ms. Pennington did not mention her boyfriend's health when she gave notice of her quit. Ms. Pennington's boyfriend has debilitating back issues that necessitate surgical intervention. That intervention has not yet occurred. Ms. Pennington's boyfriend is dependent on Ms. Pennington for assistance with activities of daily living, including transportation to and from medical appointments.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1-c 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. But the individual shall not be disqualified if the department finds that:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

Iowa Code § 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(2) 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:

(2) The claimant moved to a different locality.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 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).

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.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. The weight of the evidence establishes that Ms. Pennington voluntarily quit to relocate to Knoxville. The weight of the evidence in the record does not establish non-medical intolerable or detrimental working conditions that would have prompted a reasonable person to leave the employment. Ms. Pennington's occasional disagreements with her coworker and Mr. Messer's warning about spreading rumors do not rise to the level of intolerable and/or detrimental working conditions. The weight of the evidence does not establish that it was medically necessary for Ms. Pennington to leave the employment to avoid danger to her health or that the quit was upon the advice of a licensed and practicing physician. Ms. Pennington had not presented any medical documentation beyond a prescription label. The weight of the evidence also does not establish that it was medically necessary for Ms. Pennington to leave the employment to care for her boyfriend. The weight of the evidence establishes that Ms. Pennington could have provided similar assistance to her boyfriend without leaving the employment and that her quit was in anticipation of her boyfriend's recovery from a surgery that has yet to be scheduled.

Ms. Pennington is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Pennington must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The November 3, 2016, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs