

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ANNA S DAVIDSON**  
Claimant

**PETSMART INC**  
Employer

**APPEAL 20A-UI-08343-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20  
Claimant: Appellant (5)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.4(3) – Eligibility – Able to and Available for Work

**STATEMENT OF THE CASE:**

On July 17, 2020, Anna Davidson (claimant/appellant) filed an appeal from the July 8, 2020 (reference 01) unemployment insurance decision that denied benefits as of April 12, 2020 based on a finding claimant requested and was granted a leave of absence.

A telephone hearing was initially set for August 27, 2020. The hearing was rescheduled at the request of the employer's representative at that time due to an emergent weather situation.

The hearing was rescheduled for September 23, 2020. The parties were properly notified of the hearing. The claimant participated personally. Lisa Stange, claimant's mother, participated as a witness for claimant. Petsmart Inc. (employer/respondent) participated by Manager Bradley Beauer and was represented by Hearing Representative Frankie Patterson.

Claimant's Exhibit 1 was admitted. Official notice was taken of the administrative record.

During the course of the hearing, it became clear that the claimant's separation from employment was a pertinent issue that needed to be addressed but had not been listed on the notice of hearing. The parties chose to waive notice on the separation issue and so the administrative law judge took evidence on that issue as well.

**ISSUES:**

Is the claimant able to and available for work?

Is the claimant on an approved leave of absence?

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

## **FINDINGS OF FACT:**

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

Claimant began working for employer on March 30, 2019. Claimant initially worked for employer in a full-time salon position. Claimant subsequently switched to a part-time retail position around March 30, 2020. There was no guarantee of certain hours in this position.

There were reduced hours available for claimant throughout April and May due to the pandemic. However, after that time hours picked up again, and there were more shifts available in June, July, and August. Employer called claimant approximately 20 different days during this time to offer her hours. However, claimant was largely unresponsive to those calls.

Claimant was scheduled to work and did work on June 6, 2020. That was the last day claimant performed work for employer. Claimant was also scheduled to work on July 4 and 5 but did not appear for those shifts. Employer continued to try to reach claimant into August. It finally determined claimant had voluntarily quit by failing to make herself available for work.

The administrative law judge finds claimant voluntarily quit on June 12, 2020. This is when claimant began an intensive CNA program. After this date she stopped going in to check her schedule and did not return calls from employer regarding hours she could work. While claimant never explicitly resigned, her decision to begin the program and stop returning calls made it clear she had no intention to perform work for employer. She did not attempt to contact employer after the program ended in mid-August 2020 regarding a return to work. She has not worked elsewhere since working for employer.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the July 8, 2020 (reference 01) unemployment insurance decision that denied benefits as of April 12, 2020 based on a finding claimant requested and was granted a leave of absence is MODIFIED with no change in effect.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Claimant did not request nor was she granted a leave of absence. However, she was not unemployed from April 12, 2020 to June 12, 2020. While there were fewer hours available to claimant during this time, there was no guarantee of hours in her part-time position. Claimant was therefore employed in the same way during this period as she had been when she accepted the part-time position and was therefore not partially unemployed during this period.

Iowa Code section 96.5(1)a 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.

Iowa Admin. Code r. 871-24.25 provides in relevant part:

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:

(26) The claimant left to go to school.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal*

*Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer. Claimant voluntarily quit on June 12, 2020 to attend school. While pursuing education is an admirable endeavor, it is not a good cause reason for quitting attributable to employer.

**DECISION:**

The July 8, 2020 (reference 01) unemployment insurance decision that denied benefits as of April 12, 2020 based on a finding claimant requested and was granted a leave of absence is MODIFIED with no change in effect. Claimant was not unemployed from April 12 to June 12, 2020 and is therefore ineligible for benefits during that period. She is disqualified from benefits from June 12, 2020, due to voluntarily quitting without good cause attributable to employer. Claimant is disqualified from benefits from that date and continuing until she earns wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
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Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

September 29, 2020  
Decision Dated and Mailed

abd/scn

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.