

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

SANDRA G KITTLE
Claimant

CHILDREN'S SQUARE USA
Employer

APPEAL 23A-UI-01751-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/01/23
Claimant: Appellant (2R)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant filed an appeal from the February 7, 2023 (reference 01) unemployment insurance decision that denied benefits finding claimant voluntarily quit on December 31, 2022 for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on March 7, 2023. Claimant participated. Employer did not participate. Claimant's Exhibits 1 through 6 were admitted.

ISSUE:

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.

FINDINGS OF FACT:

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

Claimant was employed as a full-time Site Supervisor of the Children's Center until her employment with Children's Square USA ended on December 31, 2022.

Employer's children's center has been understaffed since the Covid-19 pandemic began. Claimant requested additional staff from employer but her requests were denied. Claimant expanded her job duties to include preparing and serving breakfast, lunch and a snack to students and cleaning the dishes every day; claimant also trained office staff to fill in when necessary. Claimant struggled to maintain the required staff-to-child ratios required by the Department of Human Services (DHS).

In mid-November 2022, claimant learned that employer was going to transfer one of her teachers to another division instead of paying the teacher more to remain in her current position in the children's center. Claimant would not be able to maintain the required ratios with the loss of this teacher. Being out of ratio violates DHS license requirements and could result in license revocation and fines. Claimant's recourse would be to call parents to pick up their children until she met the ratios.

On November 29, 2022, claimant emailed employer her resignation effective December 31, 2022. Claimant quit due to her inability to maintain the required teacher to child ratios. Claimant was quitting her position of Site Supervisor but hoped to continue employment with Children's Square USA in another capacity. On December 7, 2022, employer accepted claimant's resignation effective immediately; employer paid claimant through December 31, 2022.

Claimant was injured at work in November 2022. Claimant is currently under a doctor's care and has restrictions. The issue of whether claimant is able to and available for work has not been the subject of a fact-finding interview and decision.

On March 9, 2023, Iowa Workforce Development issued a decision (reference 05) finding claimant was overpaid benefits based upon the disqualifying decision on appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Notwithstanding claimant's desire to remain employed in another capacity, claimant's resignation of her job as Site Supervisor of the Children's Center is considered a voluntary quit.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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). The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

Iowa Admin. Code r. 871-24.26(3), (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:

(3) The claimant left due to unlawful working conditions.

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

Iowa Administrative Code rule 441-109.8 outlines the required staff-to-child ratios and rule 441-109.2 provides that “a license shall be revoked or suspended if corrective action has not been taken when . . . the center does not comply with center licensing laws or these rules.”

Claimant voluntarily quit because the loss of an additional teacher would make it impossible to meet the required ratio placing claimant in the position to either violate the law or call parents to pick up their children, which was an intolerable working condition. Claimant has established that she quit for a good cause reason attributable to employer. Benefits are allowed provided claimant is otherwise eligible.

The issues of whether claimant is able to and available for work and whether claimant has been overpaid benefits should be remanded for IWD for determination.

DECISION:

The February 7, 2023 (reference 01) unemployment insurance decision is REVERSED. Claimant voluntarily quit for good cause attributable to employer. Benefits are allowed provided claimant is otherwise eligible.

REMAND:

The issues of whether claimant is able to and available for work and whether claimant has been overpaid benefits are remanded to Iowa Workforce Development’s Benefits Bureau for determination/redetermination.



Adrienne C. Williamson
Administrative Law Judge

March 13, 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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: 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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.