

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENISE G. NELSON
Claimant

VARIETY DISTRIBUTORS INC
Employer

APPEAL 21A-UI-14911-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/28/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Denise G. Nelson, filed an appeal from the June 22, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant voluntarily quit employment with the employer, Variety Distributors, Inc., without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on August 26, 2021. The claimant participated personally. The employer participated through Marie Weiderin Lantz.

ISSUE:

Did the claimant quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a packer from August 26, 2019, until this employment ended on September 23, 2020, when she resigned.

Claimant had been dealing with personal health problems during the spring and summer of 2020. Her health problems made her susceptible to COVID-19. In March 2020, she began requesting time off for medical reasons. The employer allowed this time and worked with her until she returned to work on June 9, 2020. She worked in her position in the warehouse until July 14, 2020, when she again requested time off, which was granted by the employer. The employer continued to work with claimant until, eventually, the employer told claimant it could not continue to grant time off indefinitely, and decisions would need to be made. On September 23, 2020, claimant sent a note to the employer stating that she was at high risk should she contract COVID-19, and she could not return until after the pandemic had subsided, or until after a vaccine was available. Claimant did not explicitly state she quit her employment. There was no further conversation with the employer after claimant submitted the letter. The employer considered claimant separated from employment by job abandonment as of September 23, 2020.

Claimant notes that, upon returning from her initial period of leave in June 2020, she took issue with the employer's COVID-19 mitigation measures. While masks were required in the office, they were not required in the warehouse where claimant worked. When claimant expressed her concerns about masking, the employer responded that it could not force everyone to wear a mask. The employer had some other mitigation measures in place. It provided hand sanitizer and sanitizing wipes, encouraged social distancing, and encouraged mask wearing in common areas. However, claimant was, at times, confronted by the failure of these measures, when unmasked coworkers would help her in her work area, or when she was sent to another warehouse where masks were not required.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 96.5(1) 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.

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). 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).

As a preliminary matter, the administrative law judge finds that claimant did voluntarily quit employment. While she never formally told the employer that she was severing the employment relationship, there are few ways in which an employer could interpret a note such as claimant's. She did not, and likely could not, provide an expected return date, instead simply saying that she could not return to work indefinitely. Claimant made no efforts to return to work or, after the September 2020 note, to advocate for the continuation of the employment relationship. Claimant quit employment, she was not discharged. Since the administrative law judge finds that claimant quit, claimant must demonstrate that her work environment was intolerable or detrimental in order to receive benefits.

Iowa Admin. Code r. 871—24.26(4) provides:

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:

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

As such, if claimant establishes that she left due to intolerable or detrimental working conditions, benefits would be 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 Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 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. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871—24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871—24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to 871—24.26(6)(b) but not 871—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) (“[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith”); *Shontz 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) (“The 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. Therefore, claimant was not required to give the employer any notice with regard to the alleged intolerable or detrimental working conditions prior to her quitting. However, claimant must prove that her working conditions were intolerable or detrimental.

Given the facts of this case, claimant's working conditions do not rise to the level where a reasonable person would feel compelled to quit by refusing to return to employment after her quarantine period. As such, she has failed to prove that under the same circumstances a reasonable person would feel compelled to resign. See *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). Rather, the circumstances in this case seem to align with the conclusion that claimant was dissatisfied with the employer's mitigation efforts during the COVID-19 pandemic. The administrative law judge is very sympathetic to claimant's efforts to keep herself and her loved ones safe from COVID-19. However, claimant's resignation was not caused by the employer. There was no testimony that the employer forced claimant to resign or that it was so negligent as to justify claimant's resignation. Claimant had valid concerns about COVID-19 and its potential effects on her and her loved ones. However, the employer's mitigation measures were not so negligent as to justify claimant's resignation. While claimant's leaving may have been based upon good personal reasons, it was not due to intolerable or detrimental working conditions.

Iowa Admin. Code r. 871—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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 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 § 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:

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

As such, the claimant's voluntary quitting was not for a good-cause reason attributable to the employer. Benefits must be denied.

DECISION:

The June 22, 2021, reference 01, unemployment insurance decision is affirmed. Claimant quit without good cause attributable to her employer. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times her weekly benefit amount after her separation date, provided she is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

August 30, 2021
Decision Dated and Mailed

ar/scn

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If 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 unemployed or continue to be 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.