

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERESA M BRETT
Claimant

BREADTOPIA INC
Employer

APPEAL 21A-UI-17208-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/07/21
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On August 5, 2021, Teresa Brett (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated July 26, 2021 (reference 02) that disqualified claimant from receiving unemployment insurance benefits based on a finding she quit on September 30, 2020 for personal reasons.

A telephone hearing was held on September 28, 2021. The parties were properly notified of the hearing. The claimant participated personally. Breadtopia, Inc. (employer/respondent) participated by co-owner Eric Rusch. Co-owner Denyce Rusch participate as a witness for employer.

Claimant's Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. 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 worked for employer in a customer service position. Claimant's first day of employment was February 24, 2020. Claimant's immediate supervisor was Eric Rusch. Claimant did not have a set schedule but typically worked six hours per day, Monday through Friday. Claimant was told at the time of hire that she would work between 30 and 40 hours per week. The last day claimant worked on the job was September 11, 2020. Claimant resigned at that time.

A day or two prior to her resignation claimant received a positive review from employer, was told the business was doing well, and was told more customer service positions may have to be added as a result. At that time she informed employer she often did not have enough work to do during the day and could take on more work. Claimant had raised this issue with Mr. Rusch previously

but received little response. Claimant noted another customer service employee was receiving the bulk of the work and seemed to be struggling, but no additional work was assigned to claimant.

The day following the review, Mr. Rusch contacted claimant and informed her that her hours would be reduced to two hours per day, five days a week, based on her reporting she did not have enough work during the day. Claimant resigned as a result and to pursue full-time work elsewhere.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated July 26, 2021 (reference 02) that disqualified claimant from receiving unemployment insurance benefits based on a finding she quit on September 30, 2020 for personal reasons is REVERSED.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

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).

The administrative law judge finds claimant has carried her burden of proving the voluntary leaving was for good cause attributable to employer. Claimant was hired to work 30-40 hours per

week and consistently did so during the course of her employment. Employer unilaterally reduced claimant's hours to just ten per week in the days leading up to resignation. While the administrative law judge understands this was due to evolving business needs, this constitutes a significant change in the contract of hire and constitutes good cause for resigning attributable to employer. The separation from employment was therefore not disqualifying and benefits are allowed, provided claimant is not otherwise disqualified or ineligible.

DECISION:

The decision dated July 26, 2021 (reference 02) that found claimant is disqualified from receiving unemployment insurance benefits is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account shall be charged.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

September 29, 2021
Decision Dated and Mailed

abd/ol

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>.