

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA A DREW
Claimant

APPEAL NO. 14A-UI-13302-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PROFFITT'S RESIDENTIAL CARE HOME
Employer

OC: 11/30/14
Claimant: Appellant (2R)

Section 96.5(1)(c) – Voluntary Quit to Care for Sick Family Member

STATEMENT OF THE CASE:

Melissa Drew filed a timely appeal from the December 15, 2014, 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. Drew had voluntarily quit due to serious illness in a family member. After due notice was issued, a hearing was held on January 22, 2015. Ms. Drew participated. Mary Proffitt represented the employer and presented additional testimony through Emma Mericle. Exhibits A, B and C and Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether Ms. Drew'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: The employer operates a residential care facility attached to the employer's home. The residential care facility has 10 beds. The residential care facility shares the kitchen that is also the employer's family's kitchen. Off the kitchen is a dining area. There is no wall separating the kitchen from the dining area. The business owner, Mary Proffitt, is a cigarette smoker. Ms. Proffitt smokes in the dining area off the kitchen and allows others to smoke there as well.

Melissa Drew began her employment in 2005 and last performed work for the employer on November 21, 2014. Ms. Drew worked as a full-time certified nursing assistant. Ms. Drew regularly worked seven days per week, 54 hours per week. Ms. Drew's work schedule consisted of Sunday and Monday 8:00 a.m. to 8:00 p.m. Tuesday and Wednesday, 4:00 p.m. to 8:00 p.m., Thursday, 8:00 a.m. to 8:00 p.m., Friday, 2:00 p.m. to 8:00 p.m. and Saturday, 4:00 p.m. to 8:00 p.m. Though Ms. Drew consistently worked overtime hours, the employer did not pay an increased wage for overtime work.

Ms. Drew had to use the shared kitchen to perform her job duties. These included preparing meals, getting medications ready, washing dishes, and cleaning the kitchen. Ms. Drew suffers from asthma and uses an inhaler. Ms. Drew would regularly encounter cigarette smoke while

she performed work in the kitchen and had complained to the employer about the presence of cigarette smoke. The employer invested in a room air purifier, but Ms. Proffitt did not like to run the machine because it created a draft.

On November 21, 2014, Ms. Drew notified the employer in writing that she was quitting the employment. Ms. Drew cited the non-smoke free environment and the need to care for her mother as the basis for her quit. Toward the end of the employment, Ms. Drew took on substantial responsibility for caring for her sick mother. Ms. Drew's mother's significant health issues included pulmonary fibrosis, coronary artery disease, and migraine headaches. Ms. Drew's mother underwent a knee replacement on November 18, 2014. Ms. Drew also suffers from migraine headaches. Ms. Drew's decision to leave the employment was not based on advice from a doctor. Ms. Drew's care of her mother took about 30 hours per week. Ms. Drew continues to care for her mother.

In making the decision to leave the employment, Ms. Drew also considered the owner's husband's comments about Ms. Drew's roommate. However, Ms. Drew often initiated the conversation regarding her roommate's negative conduct and character.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(c) and (e) provides as follows:

96.5 Causes for disqualification.

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.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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 that Ms. Drew voluntarily quit the full-time employment primarily so that she could provide essentially full-time care to her seriously ill mother. Ms. Drew has not finished caring for her mother. Her mother has not recovered sufficiently to where Ms. Drew no longer needs to spend significant time caring for her mother. Because Ms. Drew has not finished caring for her mother, has not returned to the employer to offer her services, and has not been refused work by the employer, this basis for the quit does not make her eligible for benefits. This basis for the quit would, for the present, leave Ms. Drew disqualified for benefits until she earns 10 times the weekly benefit amount. She must then meet all other eligibility requirements.

Ms. Drew asserts a personal health/medical basis for her decision to quit the employment. However, Ms. Drew's quit was not based on advice from a physician. Accordingly, the medical basis for the quit would not make her eligible for benefits. This basis for the quit would leave Ms. Drew disqualified for benefits until she earns 10 times the weekly benefit amount. She must then meet all other eligibility requirements.

The comments about the roommate, given Ms. Drew's initiation of those discussions, would not establish intolerable or detrimental working conditions.

There are two additional bases for the quit. One is the lack of overtime pay for 14 hours per week of overtime work. The other is the exposure to secondhand cigarette smoke, regardless of whether that exposure had a demonstrated health impact. Both situations created intolerable and detrimental working conditions that would prompt a reasonable person to leave the employment. These two bases for the quit were for good cause attributable to the employer. Based on each of these bases, Ms. Drew is eligible for benefits, provided she is otherwise eligible. Based on these two bases for the quit, the employer's account may be charged for benefits.

DECISION:

The December 15, 2014, reference 01, decision is reversed as follows. To the extent the claimant's voluntary quit was based on the need to care for a sick family member or based on a purported medical condition, the quit was without good cause attributable to the employer. However, because the quit was also based on intolerable and detrimental working conditions due to the presence of secondhand cigarette smoke and overtime hours without overtime pay, the quit was indeed for good cause attributable to the employer. Because of these two bases for finding a quit for good cause attributable to the employer, the claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

This matter will be remanded to the Benefits Bureau for determination of whether the claimant has been available for work within the meaning of the law since she established her claim in light of her substantial responsibility for caring for her mother.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs