IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SAMANTHA J JESSEN
Claimant

A & B CHILDCARE INC
Employer

APPEAL NO. 20A-UI-14354-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 29, 2020, reference 01, decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on September 1, 2020 without good cause attributable to the employer. After due notice was issued, a hearing commenced on January 11, 2021 and concluded on January 12, 2021. Claimant, Samantha Jessen, participated personally and was represented by attorney Stuart Higgins. Attorney Kayla Sproul represented the employer and presented testimony through Nancy Fuller. Exhibit A through D, F and H were received into evidence.

ISSUE:

Whether the claimant's voluntary quit was without 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 is a licensed daycare provider. The claimant was employed as a full-time childcare provider from 2015 and last performed work for the employer on August 27, 2020. The claimant had a regular 7:30 a.m. start time, but the end of her shift would depend on when the closing staff arrived to relieve her of her duties. The claimant was assigned to a class of two-year olds. The state-mandated ratio of staff to children was one staff member per six children. Prior to the COVID-19 pandemic, the claimant was one of two childcare providers working the claimant's assigned room. At that time, there were more than six children in the room. In connection with the COVID-19 pandemic, the number of children in the claimant's assigned room declined to six and the claimant was then the sole childcare provider in her assigned room. The employer had a staff member relieve the claimant and other teachers as needed for breaks. The employer also relied the claimant and other staff to communicate break needs and other needs in the event a break or some other need was overlooked.

After the claimant worked on July 13, 2020, she went off work for an extended time. The claimant initially went off work due to back pain, but then was diagnosed with COVID-19. The

claimant returned to work on August 25, 2020. The claimant had been released to return to work, but was feeling less than optimal when she returned.

The claimant last performed work for the employer on August 27, 2020. The claimant was upset because the employer had overlooked her break. The claimant had a personal cell phone available, but elected not to use it at her time of need because she was using it to play music for the children in her room.

On the evening of August 27, 2020, the claimant notified the employer that she did not feel well enough to continue in the employment and was going off work indefinitely. The claimant indicated that she planned to return to the employment when she felt better, but gave no indication when that might be. The employer continued to have work for the claimant until the beginning of October 2020. The employer attempted to initiate contact with the claimant on August 31, 2020, but the claimant elected not to acknowledge the messages or respond.

The employer again initiated contact with the claimant on September 1, 2020. The claimant responded that she was still experiencing symptoms of COVID-19 and was to have a chest x-ray later in the week. The claimant disregarded the employer's request for a medical note to support her continued need to be off work.

The claimant then continued out of contact with the employer until she showed up at the workplace on October 6, 2020 with a resignation letter she had drafted on October 5, 2020. The claimant had ignored the employer's attempt to contact her on September 22, 2020 via text message. Though the employer's absence reporting policy required that the claimant notify the employer each day of her absence, the claimant disregarded that requirement between September 2, 2020 and her surprise appearance on October 6, 2020. The claimant's resignation letter spoke of her dissatisfaction with the work environment. The claimant's resignation memo alleged a hostile work environment, though there was no such hostility. A day after the claimant delivered her resignation letter, she contacted the employer to complain about personal effects she alleged were missing from her assigned room. In light of the claimant's extended absence and discontinuation of contact with the employer, the employer eventually assigned another employee to the claimant's assigned room. The employer was unaware of any personal effects belonging to the claimant being removed from the assigned room.

REASONING AND CONCLUSIONS OF LAW:

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).

Iowa Code section 96.5(1)(d) 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. 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.

Iowa Administrative Code rule 817-24.26(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.

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.

The test is whether working conditions are intolerable and/or detrimental includes determination of 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).

Iowa Admin. Code r. 871-24.25(4) and (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 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:
> …
> (4) The claimant was absent for three days without giving notice to employer in violation of company rule.
> …
> (21) The claimant left because of dissatisfaction with the work environment.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. The evidence establishes a quit that was effective August 27, 2020, when the claimant made the unilateral decision to indefinitely discontinue the employment relationship at a time when the employer continued to have work available to her. The claimant had not requested a leave of absence and the employer had not approved a leave of absence. The claimant was upset that she missed a break and that the employer did not check in on her as often as she liked. The clamant was a seasoned employee. The employer reasonably expected the claimant to communicate her needs in the event the employer overlooked a needed break or some other need. The claimant elected not to maintain reasonable and appropriate contact with the employer over the course of weeks. The claimant's actions over those weeks communicated a decision to leave the employment. The claimant's delivery of the resignation letter in October was a needless formality, as the employer had already reasonably concluded that the claimant had quit the employment. The clamant speaks in hyperbole. The claimant is quick to find fault with the employer but goes to great lengths to rationalize her own unreasonable conduct. The evidence fails to establish a medical condition that made it necessary for the claimant to leave the employment. The claimant's decision to leave the employment was not upon the advice of a licensed and practicing physician. There was no hostile work environment. Rather, there was a quit due to general dissatisfaction with the work environment. The claimant quit the employment before raising the concern about her personal effects. In others, the missing personal effects were not a factor in the quit. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The October 29, 2020, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

This decision regarding the claimant's eligibility for regular benefits does nothing to negate the PUA eligibility determination.

James E. Timberland
Administrative Law Judge

January 28, 2021
Decision Dated and Mailed

jet/scn