IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

Angie Valencia Claimant **Horizons A Family Service Alliance** Employer	**APPEAL 20A-UI-06609-BH-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/03/20** **Claimant: Appellant (2)**

Iowa Code section 96.5(1) – Voluntary Quit

Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause Attributable to the Employer

Iowa Administrative Code rule 871-24.26 – Voluntary Quit With Good Cause Attributable to the Employer

STATEMENT OF THE CASE:

The claimant, Angie Valencia, appealed the June 16, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a finding Valencia voluntarily left employment with Horizons A Family Service Alliance (Horizons) without good cause attributable to the employer. The agency properly notified the parties of the appeal and hearing.

The undersigned presided over a telephone hearing on July 24, 2020. Valencia participated personally and testified. Horizons participated through the human resources director at Horizons, Brian Heeren, who also testified. Claimant's Exhibit A and Employer's Exhibit 1 were admitted into evidence.

ISSUES:

Was Valencia's separation from employment with Valencia a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Horizons hired Valencia on January 2, 2019, as a delivery driver. On July 28, 2019, Horizons promoted Valencia to the position of breakfast bag coordinator. After changes to the position's duties that impacted Valencia's ability to physical perform the job, she resigned the position effective May 1, 2020. Then Horizons agreed to hire her as a part-time delivery driver. Valencia resigned as a part-time delivery driver with Horizons effective May 20, 2020.

After Valencia broached the subject of working part time as a delivery driver to Tabitha Downing, the supervisor who oversaw delivery drivers, the two discussed what Valencia's work schedule would look like. Downing made clear that Valencia would likely not work 40 hours per week. However, the two reached an agreement on a schedule in which Valencia would work more than 30 hours per week. Heeren also informed Valencia that the work would be part time in nature. Valencia's first day working as a part-time delivery driver was May 3, 2020.

Valencia's grandson was in daycare at the time. He had possible contact with another person at daycare who had tested positive for the COVID-19 virus. Consequently, Valencia's son had to quarantine while his COVID-19 test was pending. Valencia stayed home with him. She notified Downing of the situation on or about May 12, 2020. Valencia's grandson ultimately tested negative for COVID-19.

Valencia informed Downing of her grandson's negative test on May 18, 2020. She told Downing she was ready to return to work. Downing did not allow Valencia to return to work because she was waiting to hear back from human resources on when Valencia could return to work because of her potential exposure to COVID-19. On May 19, Valencia called Downing again, but Downing had still not heard when Valencia could return to work.

On May 20, Valencia called Downing again. Downing still had no answer for her. Valencia needed to work to pay her bills. She told Downing she was quitting. Valencia then sent a written resignation via text message to Downing and Heeren.

Valencia quit because she felt Horizons was unnecessarily preventing her from working. According to Valencia, Horizons could have figured out when she would be able to return to work during her leave of absence instead of waiting until after her grandson had tested negative for COVID-19 and returned to daycare, which made her able to return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Valencia left employment with Valencia without good cause attributable to the employer under the Iowa Employment Security Law, Iowa Code chapter 96.

Iowa Code section 96.5(1) disqualifies a claimant from benefits if the claimant quit she job without good cause attributable to the employer. The Iowa Supreme Court has held that good cause requires "real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). Moreover, the court has advised that "common sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id*.

According to the Iowa Supreme Court, good cause attributable to the employer does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *E.g. Raffety v. Iowa Employment Security Comm'n*, 76 N.W.2d 787, 788 (Iowa 1956).

A burden-shifting framework is used to evaluate quit cases. Because an employer may not know why a claimant quit, the claimant has the initial burden to produce evidence suggesting the claimant is not disqualified from benefits under Iowa Code section 96.5(1) *a* through *j* and

section 96.10. If the claimant produces such evidence, the employer has the burden to prove the claimant is disqualified from benefits under section 96.5(1).

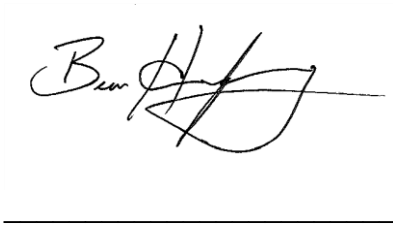
Iowa Administrative Code rule 24.25 creates a presumption a claimant quit without good cause attributable to the employer in certain circumstances. Iowa Administrative Code rule 24.26 identifies reasons for quitting that are considered good cause attributable to the employer and instances in which a claimant leaves employment that are not considered voluntary quits. Under rule 24.26(1):

> 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.

Here, the evidence shows that Valencia resigned after Horizons refused to allow her to return to work the schedule she had agreed to with Downing after she quit her job as the breakfast bag director. While the driver position was part time and the parties agreed they would fluctuate, Valencia agreed to work in the part time driver position after she and Downing agreed to a schedule. The parties' understanding did not include Horizons refusing to allow Valencia to work. The refusal by Horizons to allow Valencia to return to work effectively reduced her hours to none. Given the discussions between Valencia and Downing, the manager who oversaw drivers, the refusal to allow Valencia to work constitutes a willful breach of the contract of hire by Horizons, which is not a disqualifiable issue.

DECISION:

The June 16, 2020 (reference 01) unemployment insurance decision is reversed. Valencia voluntarily left employment because Horizons willfully violated the contract of hire by refusing to allow Valencia to work the schedule she and Downing had agreed to before Valencia accepted the part time job of driver. Valencia is therefore entitled to benefits, provided she is otherwise eligible under the law.



Ben Humphrey
Administrative Law Judge

July 31, 2020
Decision Dated and Mailed

bh/mh