IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU

AUDREY K GRIES Claimant **IOWA PHYSICIANS CLINIC MEDICAL FO** Employer	**APPEAL 23A-UI-09235-DZ-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/27/23** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Audrey K. Gries, the claimant/appellant,[1] appealed the Iowa Workforce Development (IWD) September 18, 2023 (reference 01) unemployment insurance (UI) decision. IWD denied Ms. Gries REGULAR (state) UI benefits because IWD concluded she voluntarily quit on August 26, 2023 and she did not give IWD evidence that she had good cause to quit. On October 2, 2023 the Iowa Department of Inspections, Appeals, and Licensing (DIAL, UI Appeals Bureau mailed a notice of hearing to Ms. Gries and the employer for a telephone hearing scheduled for October 16, 2023.

The undersigned administrative law judge held a telephone hearing on October 16, 2023. Ms. Gries participated in the hearing personally. On October 6, 2023, the employer informed the DIAL UI Appeals Bureau that it would not participate in the hearing. The employer did not participate in the hearing.

ISSUE:

Did Ms. Gries voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Gries began working for the employer in 2011. She worked as a full-time physician assistant. Her employment ended on August 23, 2023.

Ms. Gries noticed that the employer began treating her differently in 2015 when she returned from maternity leave. The employer began requiring her to be coached more often and told her that patients were complaining about her work. After investigation, the employer concluded that the patient complaints were not substantiated. Ms. Gries filed a complaint with the employer about this treatment. Ms. Gries noticed similar treatment after she returned from maternity leave in 2017 and she again filed a complaint with the employer.

[1] Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

Ms. Gries took Family Medical Leave Act (FMLA) leave for about four months in 2021. Upon her return, the employer changed her schedule and her on-call time. Ms. Gries perceived this as retaliation for her taking FMLA leave. Ms. Gries filed a complaint with the employer and within about one month the employer changed her schedule back to her pre-leave schedule.

In early 2023, Ms. Gries took intermittent FMLA leave to care for a family member. Ms. Gries noticed that the employer was hyper-focused on her work performance. At some point in 2023, Ms. Gries' then-supervisor told her that a patient had complained about her work and the employer's legal department was involved. Ms. Gries contacted the employer's legal department, and they told her that they had not heard about any patient complaints against her.

Ms. Gries wanted to leave employment with the employer for years, but she stayed because she had signed a non-compete agreement with the employer that limited her ability to find new employment. Sometime in May/June 2023, Ms. Gries' supervising physician stopped working for the employer. This was the last straw for Ms. Gries since the supervising physician was her main supporter at work.

Soon thereafter, Ms. Gries asked the employer to release her from the non-compete agreement. The employer agreed on condition that Ms. Gries' employment end the next day. Ms. Gries declined the employer's offer. The employer then offered Ms. Gries the option to move to a different work location with less pay. Ms. Gries declined.

Ms. Gries concluded that she needed to get out of a bad situation. Ms. Gries, through her attorney, negotiated a settlement with the employer in which the employer would pay her six months of her salary, she would not pursue litigation against the employer for discrimination and her employment would end. Ms. Gries and the employer signed the agreement and her employment ended on August 23.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Ms. Gries' separation from employment was without good cause attributable to the employer.

Iowa Code section 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.

Iowa Admin. Code r. 871-24.25 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:

> (21) The claimant left because of dissatisfaction with the work environment.
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> (37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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 claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer.[2] A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention.[3] "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.[4]

Generally, an employee is required to give notice of an intent to quit to give the employer an opportunity to fix working conditions.[5] In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. However, the requirement was only added 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. The Iowa 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.[6] So, Ms. Gries was not required to give the employer notice about intolerable or detrimental working conditions before she quit. But she must prove that her working conditions were intolerable, detrimental, or unsafe.

In this case, Ms. Gries ended her employment because her main supporter no longer worked for the employer, and she was dissatisfied with the work conditions. Ms. Gries testified that the employer was the one that initiated negotiations to end her job. But her other testimony establishes otherwise. Ms. Gries wanted out, so she initiated ending her job. Ms. Gries voluntarily quit.

Regarding intolerable and detrimental working conditions, the law sets the standard as would a reasonable person find the working conditions intolerable and detrimental. Ms. Gries has not met that standard. Ms. Gries' dissatisfaction with the employer not releasing her from the non-

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[2] Iowa Code § 96.6(2).
[3] *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).
[4] *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).
[5] *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996).
[6] *Hy-Vee, Inc. v. Employment Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005).

compete agreement and the departure of her main supporter do not rise the level of intolerable and detrimental work conditions. Ms. Gries did what was best for her, but her leaving was not for a good-cause reason attributable to the employer according to Iowa law. Ms. Gries is not eligible for UI benefits.

DECISION:

The September 18, 2023 (reference 01) UI decision is AFFIRMED. Ms. Gries voluntarily left her employment without good cause attributable to the employer. Ms. Gries is not eligible for UI benefits until she has worked in and been paid wages for insured work equal to ten times her weekly UI benefit amount, as long as no other decision denies her UI benefits.

Daniel Zeno
Administrative Law Judge

October 19, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

1) The name, address, and social security number of the claimant.
2) A reference to the decision from which the appeal is taken.
3) That an appeal from such decision is being made and such appeal is signed.
4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at https://www.legis.iowa.gov/docs/code/17A.19.pdf or by contacting the District Court Clerk of Court https:///www.iowacourts.gov/iowa-courts/court-directory/.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:
A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

1) El nombre, dirección y número de seguro social del reclamante.
2) Una referencia a la decisión de la que se toma la apelación.
3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en https://www.legis.iowa.gov/docs/code/17A.19.pdf o comunicándose con el Tribunal de Distrito Secretario del tribunal https:///www.iowacourts.gov/iowa-courts/court-directory/.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:
Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.