

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DIANE SPENCE

Claimant

APPEAL 20A-UI-06843-BH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES

Employer

OC: 04/19/20

Claimant: Appellant (1)

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

Iowa Code section 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant, Diane Spence, appealed the June 12, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a finding Spence voluntarily quit her job with Care Initiatives (Care Initiatives) 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 30, 2020. Spence participated personally and testified. Care Initiatives participated through Alyce Smolsky of Talx UCM Services, Inc., who served as the employer representative and Kristi Schubert, who testified.

ISSUES:

Was Spence's separation from employment with Care Initiatives 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.

Care Initiatives hired Spence on May 8, 2018. Spence worked part time as a dietary cook. At the time of hearing, the employment relationship between Care Initiatives and Spence had not ended.

Spence has chronic obstructive pulmonary disease (COPD). She was age 71 at the time of year. Spence's age and her COPD place her at high risk of serious health issues and death from COVID-19.

Spence's son has alpha 1 antitrypsin. It is a respiratory condition that requires him to be on oxygen. Her son has been on a ventilator five times due to the condition. Another of Spence's children died from complications of the same condition. Spence and her husband help care for their son. Spence is his primary caregiver.

Spence and her husband began wearing masks when news of COVID-19 first broke. They did so because of the risk it posed their son. If their son catches COVID-19, it is highly probable that he will die.

On April 12, 2020, Spence requested a leave of absence because of the severe health risk COVID-19 posed to her and her son. Care Initiatives granted her request. They placed her "casual status," which allows her to work one shift per ninety days. At the time of hearing, Spence was on the leave of absence she and Care Initiatives agreed she could take. She plans to stay on a leave of absence until people stop getting sick and dying from COVID-19.

Spence had not thought to file for benefits until she received a letter from Care Initiatives. Spence thought she had applied for federal Pandemic Unemployment Assistance, which she referred to as "the COVID-19 option."

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) disqualifies a claimant from benefits if the claimant quit her job without good cause attributable to the employer. Spence did not quit her job with Care Initiatives. At the time of hearing, Spence was still employed with Care Initiatives. Therefore, Iowa Code section 96.5(1) does not apply to Spence's claim for benefits.

Under Iowa Code section 96.4(3), a claimant must be able to, available for, and earnestly and actively seeking work in order to be eligible for benefits. Iowa Workforce Development (IWD) has issued rules governing whether a claimant on a leave of absence is available for work under section 96.4(3). Iowa Administrative Code rule 871-24.22(2)(j) states:

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Further, rule 871-24.23(10) provides that a claimant is disqualified from benefits for being unavailable for work if "the claimant requested and was granted a leave of absence" because "such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period."

Here, the evidence shows that Spence requested a leave of absence because of the threat posed by COVID-19 to her and her son's health. Care Initiatives granted the request. Under rule 871-24.23(10), Spence is disqualified from regular unemployment insurance benefits under state law because the leave of absence constitutes a voluntary period of unemployment.

This decision does not address whether Spence might be entitled to Pandemic Unemployment Assistance under the federal CARES Act.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The June 12, 2020 (reference 01) unemployment insurance decision is affirmed. Spence voluntarily left employment without good cause attributable to Care Initiatives. Benefits are withheld until such time as Spence has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though Spence is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if she is eligible for such compensation for the week claimed.

This decision does not address whether Spence is eligible for PUA. For a decision on such eligibility, Spence must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>



Ben Humphrey
Administrative Law Judge

August 5, 2020
Decision Dated and Mailed

bh/scn