

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**REBECCA L HOIST**

Claimant

**APPEAL NO. 18A-UI-08229-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNIVERSITY OF DUBUQUE**

Employer

**OC: 07/15/18**

**Claimant: Appellant (5)**

Iowa Code Section 96.5(1)(d) – Voluntary Quit

**STATEMENT OF THE CASE:**

Rebecca Hoist filed a timely appeal from the July 31, 2018, reference 01, decision that disqualified her for unemployment insurance benefits and that relieved the employer's account of liability for benefits. After due notice was issued, a hearing was held on August 23, 2018. Ms. Hoist participated and presented additional testimony through Wendy Kish. Julie McTaggart represented the employer and presented additional testimony through Craig Kloft

**ISSUE:**

Whether Ms. Hoist'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: Rebecca Hoist was employed by University of Dubuque as a full-time custodian from January 2017 until July 6, 2018, when she voluntarily quit due to working conditions that she perceived to be intolerable and detrimental. Ms. Hoist suffers from underlying mental health issues that factored heavily in her perception of events and her decision to leave the employment.

On March 27, 2018, one of Ms. Hoist's fellow custodians, Tom Russell, became upset when he learned that Ms. Hoist had volunteered to perform cleaning duties over and above the assigned custodial duties. Ms. Hoist and Mr. Russell had hitherto enjoyed an amicable working relationship. On March 27, Mr. Russell told Ms. Hoist, "If you clean that kitchen and it becomes my job, we're going to have problems." Ms. Hoist misperceived the utterance as a threat to her safety. Ms. Hoist further concluded, without a reasonable basis, that Mr. Russell presented a threat of gun violence. Her conclusion was based on the Mr. Russell's March 27 utterance and her earlier knowledge that Mr. Russell was a gun rights supporter. Mr. Russell had not done or said anything to lead a reasonable person to conclude that he presented a threat of gun violence.

On March 28, Ms. Hoist had a "girls' night out" with former coworkers, with whom she had worked during her previous employment with Ameriserve on the University of Dubuque campus. Ms. Hoist spoke to these friends about the March 27 interaction with Mr. Russell. Ms. Hoist drew a connection between her work concerns and the workplace shooting in California.

On Sunday, April 1, Ms. Hoist reported her concerns to Wendy Kish, Lead Custodian. Ms. Kish was aware that Mr. Russell could at times demonstrate an angry demeanor. Ms. Kish had on one occasion observed Mr. Russell throw down a broom or mop and storm off. Ms. Kish recommended that Ms. Hoist discuss her concern with human resources personnel. Ms. Hoist said she would think about it.

On April 2, 2018, Ms. Hoist discussed the March 27, 2018 incident with Julie McTaggart, Human Resources Director, and Craig Kloft, Director of Facilities. Before the concern had arisen, Ms. Hoist had requested and been approved to transfer to cleaning at a different building. That change was scheduled to take effect on April 16, 2018. Ms. McTaggart and Mr. Kloft listened to Ms. Hoist's concern. Mr. Kloft told Ms. Hoist that she and Mr. Russell would continue to work in the same building until the effective date of the transfer. Ms. Hoist was unnerved by this information and believed the employer should immediately move her to the new assignment. Ms. Hoist stated that she was going to take a vacation day. Ms. McTaggart told Ms. Hoist that she would speak with Mr. Russell and call Ms. Hoist the next day.

On or about this same day, April 2, Al Bahl, Assistant Director of Facilities, spoke to Ms. Hoist and stated that it had come to his attention that Ms. Hoist had been gossiping about work matters. Mr. Bahl did not specify what he was referring to, but Ms. Hoist concluded he must have been referring to her March 28 discussion with her former Ameriserve coworkers.

After Ms. McTaggart met with Ms. Hoist, she promptly met with Mr. Russell. Ms. McTaggart then contacted Ms. Hoist. Ms. McTaggart told Ms. Hoist that she had spoken with Mr. Russell, that things should be okay, and that Mr. Russell would leave Ms. Hoist alone. Ms. McTaggart asked Ms. Hoist whether she felt she could return to work. Ms. Hoist returned to work, but resented the idea that she had used a vacation day in connection with the matter. Ms. Hoist worked another eight shifts in the same building as Mr. Russell, during which time the pair had minimal contact. On April 16, Ms. Hoist then moved to her new assignment in a different building.

Though the matter appeared to the employer to be resolved, Ms. Hoist held on to the notion that Mr. Russell presented a continued threat to her. Mr. Russell did not do or say anything that would cause a reasonable person to conclude that Mr. Russell presented a threat to Ms. Hoist.

On June 11, 2018, Ms. Hoist started her commute to work, but concluded she could not report for work. Sometime during the preceding week, Ms. Hoist had heard Mr. Russell's voice on the radio communication system. Mr. Russell was communicating about a work matter with someone other than Ms. Hoist. Just hearing Mr. Russell's voice left Ms. Hoist unnerved. Ms. Hoist contacted Ms. McTaggart. Ms. Hoist told Ms. McTaggart that she had "lost it" on her way to work and could not come to work. Ms. McTaggart reminded Ms. Hoist that they had addressed the issue with Mr. Russell. Ms. Hoist confirmed she had had no more problems with Mr. Russell. Soon, thereafter, Ms. Hoist submitted an application for a health provider certification for intermittent leave under the Family and Medical Leave Act (FMLA). The materials indicated that Ms. Hoist would need to be off work for one to two days per month for mental health issues related to former military service. Ms. McTaggart approved the request for intermittent FMLA leave.

Three days later, when Ms. Hoist had not returned to work, a human resources representative contacted Ms. Hoist to let her know that the FMLA leave would run simultaneously with sick leave and vacation leave until those two forms of paid leave ran out, after which additional leave would be unpaid. This reminder was merely a statement of the employer's FMLA policy under which employees were required to use accrued paid leave in connection with FMLA leave time. Ms. Hoist advised the employer that she needed to continue off work.

On July 3, Ms. McTaggart telephoned Ms. Hoist to let her know that her sick leave and vacation leave were running out and that additional time would be unpaid.

On July 6, 2018, the employer received Ms. Hoist's resignation memo. Ms. Hoist's mental health counselor had offered to provide an FMLA certification to support ongoing FMLA leave. Ms. Hoist declined that offer, but accepted her mental health counselor's assistance in writing the resignation memo.

In the memo, Ms. Hoist referred to the above-referenced matters and asserted that the employer's handling of the concerns had created intolerable working conditions that compelled her to resign. Ms. McTaggart telephoned Ms. Hoist in response to receiving the resignation memo. Ms. McTaggart invited Ms. Hoist to continue on unpaid FMLA leave. Ms. McTaggart offered to speak with Ameriserve to see whether Ms. Hoist could return to Ameriserve. Ms. Hoist stated that she could not be on campus due to panic attacks. Ms. Hoist stated that she could not do anything and that her mental health counselor thought she needed to take time off and enter a treatment center for a month or so. Ms. McTaggart invited Ms. Hoist to return to the University of Dubuque in the future.

#### **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). 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.

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.

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 Iowa Administrative Code rule 871-24.26(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 213 (Iowa 2005).

The weight of the evidence in the record establishes a voluntary quit based on a non-work related mental health issue. The weight of the evidence simply does not support Ms. Hoist's assertion that the employer or that Mr. Russell created intolerable and/or detrimental working conditions. The weight of the evidence indicates that Ms. Hoist had an unpleasant, but isolated and relatively minor run-in with a dyspeptic coworker on March 27. That interaction would not have prompted a reasonable person to respond similarly to the way Ms. Hoist did. Regardless, Ms. Hoist expressed her concerns to the employer and the employer provided a reasonable, appropriate, and timely response to the concern. What the employer could not resolve were Ms. Hoist's underlying mental issues. The weight of the evidence establishes that nothing transpired in connection with the employment following the April resolution of the workplace issue that would have prompted a reasonable person to feel compelled to leave the employment. The determinative factors in Ms. Hoist's decision to leave the employment were her underlying, non-work related mental health issues. The evidence establishes that Ms. Hoist's mental health provider had identified a serious mental issue and was indeed advising Ms. Hoist to go off work and enter inpatient treatment of one form or another.

At the time of the separation, and at present, the voluntary separation was without good cause attributable to the employer. Accordingly, Ms. Hoist is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Hoist must meet all other eligibility requirements. The employer's account shall not be charged for benefits. Ms. Hoist may also requalify for benefits by (1) recovering from her mental health issues to a sufficient degree where her mental health provider releases her to return to the full-time, custodial work at University of Dubuque, (2) returning to the employer upon release to return and with proof that she has been released to return, and (3) offering to return to the employment. If the employer then declines to return Ms. Hoist to the employment, Ms. Hoist's separation would become for good cause attributable to the employer, Ms. Hoist would become eligible for benefits, provided she meets all other eligibility requirements, and the employer's account would be subject to being charged for benefits.

**DECISION:**

The July 31, 2018, reference 01, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer due to a non-work related serious mental health issue and pursuant to the advice of a mental health professional. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits. The claimant may also requalify for benefits by (1) recovering from her mental health issues to a sufficient degree where her mental health provider releases her to return to the full-time, custodial work at University of Dubuque, (2) returning to the employer upon release to return and with proof that she has been released to return, and (3) offering to return to the employment. If the employer then declines to return the claimant to the employment, the claimant's separation would become for good cause attributable to the employer, the claimant would become eligible for benefits, provided she meets all other eligibility requirements, and the employer's account would be subject to being charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs