

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH SIGLIN
Claimant

APPEAL NO: 17A-UI-10992-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND DENTAL LLC
Employer

OC: 09/24/17
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 16, 2017, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on November 14, 2017. The claimant participated in the hearing with former Business Assistant Karen Dorpinghaus. Morgan Semple, Human Resources Representative and Willy Kappie, Practice Manager of Operations, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time dental hygienist for Heartland Dental from December 28, 2012 to September 26, 2017. She voluntarily left her employment over concerns regarding the employer jeopardizing her license and the doctor calling in sick forcing the clamant to use her vacation if she wanted a regular paycheck.

The employer hired a new dental assistant in August 2017 and the doctor instructed her to make and place temporary crowns in patients, take impressions for final crowns, remove braces with a high speed drill; and place lower lingual retainers that the doctor bonded, none of which her license allowed. These tasks were being performed by the dental assistant, especially the crown work, on a nearly daily basis. By witnessing the actions and not reporting it to the Dental Board the claimant was putting her license in jeopardy. She spoke to the doctor about the situation on approximately August 28, 2017. The claimant told him the dental assistant could not perform those tasks and the doctor said they both knew she was capable of performing them. The claimant told the doctor the dental assistant could not do so legally and thought the doctor would end the practice of allowing the dental assistant to work outside the scope of her license but the arrangement continued.

The claimant also stated that the doctor missed 15.5 days of work in the last two years. His absences resulted in her having to use her vacation if she wanted to maintain her normal paycheck because if he did not work the claimant did not get paid if she did not use her vacation hours to make up the difference.

On September 26, 2017, the claimant went to the practice manager of operations with her concerns about the doctor and he went to the doctor and stated the three of them needed to talk. They met around lunch time and the claimant stated there were multiple issues regarding the dental assistant working outside the scope of her practice. There was no resolution and the claimant told the employer she was quitting. She gathered her license and her personal items and left.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer.

Iowa Code section 96.5(1) 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.

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

By the doctor allowing the dental assistant to perform tasks outside the scope of her license he placed the claimant's license in jeopardy because she was ethically bound to report the situation if she was aware of it. The dental assistant was afraid to complain for fear of losing her job and the claimant did not want to cause the dental assistant to lose her license by reporting what the doctor was allowing the dental assistant to do. The claimant talked to the doctor on two occasions but he continued the practice.

The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that she intends to quit employment

unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. *Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant*, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer of her concerns regarding the dental assistant but the employer continued the practice. The claimant subsequently quit due to those conditions. Under these circumstances, the administrative law judge finds the claimant has demonstrated that her leaving was for good cause attributable to the employer. Therefore, benefits are allowed.

DECISION:

The October 16, 2017, reference 02, decision is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs