

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEANNA M LOCKHART
Claimant

WINTERSET COMMUNITY SCHOOL DIST
Employer

APPEAL 21A-UI-09782-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
Claimant: Appellant (1)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On April 6, 2021, the claimant/appellant filed an appeal from the March 31, 2021, (reference 01) unemployment insurance decision that disallowed benefits based on claimant voluntarily quitting for personal reasons. The parties were properly notified about the hearing. A telephone hearing was held on June 18, 2021. Claimant participated through her attorney Nathaniel Arnold. Claimant testified during the hearing. Employer participated through Tammy Ellwanger. Employer called as witnesses Tammy Ellwanger and Justin Gross. Exhibits 1, A, B, C, D, E, and F were admitted into the record.

ISSUES:

Was the separation a discharge or voluntary quit with good cause?

Is the claimant able to work and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 23, 2000. Claimant last worked as a full-time one-on-one teacher's associate. In her position she would be assigned to special needs children and assist them with their learning. Claimant was separated from employment on August 24, 2020, when she submitted her written resignation to the employer. Claimant last worked for the employer on March 11, 2020. Claimant had been on FMLA until March 9, 2020. Claimant went back to work and then the school was shut down after March 11, 2020 due to COVID-19.

On July 28, 2020, the claimant contacted the employer to inquire about her remaining FMLA balance to see if she could resume taking leave from work. On July 31, 2020, the claimant emailed the employer asking if she could have reasonable accommodations per ADA to perform her duties remotely from home. (Exhibit C, pg. 2 and Exhibit E). The claimant offered to provide a doctor's note for the request. (Exhibit C). Claimant has pre-existing asthma and chronic

bronchitis that is not attributable to the employer. The claimant never provided the 7/31/20 or 8/13/20 doctor's notes to the employer and never informed the employer about her health conditions. (Exhibits B & D).

The Employer notified the claimant she was not eligible for additional FMLA leave on August 6, 2020. (Exhibits C & F). In the August 6, 2020, email employer notified claimant that they would need additional medical documentation to determine if her request for reasonable accommodations could be met. (Exhibit C). Employer notified claimant that she would have to be on-site to fulfill the duties of her contract. (Exhibit C). Claimant did not respond to the employer's email.

On August 13, 2020, the superintendent, Justin Gross emailed claimant again regarding her ADA accommodation request and inquiring whether claimant would be returning to work. Mr. Gross informed claimant the employer was expecting her to return unless they received her resignation. (Exhibit C). Mr. Gross also informed claimant employer would work to provide an ADA accommodation but she would be expected to perform her essential job functions within the school building. Employer had provided accommodations to other staff which included larger workspaces, face shields, mandatory mask wearing for staff, increased sanitation measures, and Plexiglas between students. Claimant did not respond to Mr. Gross' August 13, 2020 email.

On April 19, 2020, the employer sent claimant a certified letter laying out their attempts to contact claimant regarding her ADA accommodations request to which they received no response from Claimant. (Exhibit 1, pg. 7). Since the claimant had not responded to their previous correspondence and phone calls they district laid out three options for the claimant: 1) return to work on August 24th and perform the essential jobs functions of her contract; 2) turn in a letter of resignation; 3) should claimant not show up for work she would be terminated for job abandonment. (Exhibit 1, pg. 7). Claimant received this letter on Monday, August 24, 2020. (Exhibit 1, pg. 8).

On Friday, August 21, 2020, (three days before claimant received the certified letter from the employer) claimant submitted her written letter of resignation via email. Claimant resigned due to her risk factors and her doctor instructing her that she would not be able to safely return to work without accommodations for her health condition. (Exhibit 1, pg. 9). Claimant's resignation was effective August 24, 2020.

Employer conducted in-school learning for its students for the 2020-2021 school year. There was virtual learning by some students but none of them were children who had one-on-one teachers. Students were required to wear mask beginning in October 2020. Employer did not have comparable jobs available to claimant to be conducted virtually or at home.

Claimant has not worked since March 11, 2020. Claimant has not been cleared to return to work by her physician. Her physician does not recommend she work outside of the home. The claimant has not looked for other work.

REASONING AND CONCLUSIONS OF LAW:

First it must be determined whether claimant quit or was discharged from employment. A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*,

289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Claimant argues she was compelled to resign due to the August 13, 2020 email that informed her employer expected her to return unless it received a resignation. (Exhibit 1, pg. 6). In the August 13, 2020, email the employer is attempting to get the claimant to communicate with them regarding her ADA accommodation request and to figure out her intention of returning to work. The administrative law judge does not find that this email was forcing the claimant to resign or she would be discharged. There was work available to claimant and the employer was willing to work with her if she would communicate with them regarding her ADA accommodation request. Claimant failed to communicate with them. Claimant also relies on the August 19, 2020 letter which laid out her three options 1) come to work, 2) resign, or 3) be terminated for job abandonment. (Exhibit 1, pg. 7). The claimant did not receive the August 19, 2020 letter until after her written resignation was submitted to employer on August 21, 2020, thus that letter was not a factor in her decision to resign. (See Exhibit 1, pg. 8 showing claimant signed for the letter on August 24, 2020). The administrative law judge finds claimant voluntarily quit by tendering her written resignation on August 21, 2020.

Next, it must be determined if the claimant's voluntary quit was with good cause attributable to the employer.

Iowa Admin. Code r. 871-24.26(2) 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:

(2) The claimant left due to unsafe working conditions.

Since claimant voluntarily quit, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

In order to meet this standard, the claimant has to show a reasonable person in her position would have quit due to the unsafe working conditions, which is a fairly high standard. Claimant did not meet her burden of proof establishing unsafe working conditions. Employer testified there were COVID-19 mitigation procedures in place including mandatory face masks for staff, face shields, physical distancing, putting staff in bigger areas to allow for more distancing, Plexiglas, and increased sanitation measures. The claimant offered no evidence that the working conditions were unsafe. The claimant did not meet her burden of proof establishing unsafe working conditions.

The claimant also argued she had to quit because she has a pre-existing condition and she did not want to be exposed to COVID-19.

Iowa Code § 96.5(1)d 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. 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.

Claimant testified she had to resign because of her illness. Claimant provided proof from her physician that recommended she not return to work in the Fall of 2020 or if she worked that it be done from home. (Exhibit B and D). Claimant immediately notified employer and did ask for FMLA leave. FMLA was not available for the claimant so the employer could not grant her request. Claimant testified that she has not been released to work again and she had not reached out to the employer to work again. Claimant has not met her burden of proof under Iowa Code § 96.5(1)d or Iowa Admin. Code r. 871-24.26(6)(a) to establish that she is entitled to benefits.

Claimant mainly focused her argument on the failure to make ADA accommodations for her pre-existing condition and the concern of being exposed to COVID-19.

Iowa Admin. Code r. 871-24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

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.

Claimant has the burden of proof to establish that the injury, illness or aggravation is work-related. *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976). In this case, claimant has not met her burden. Claimant testified that her condition was pre-existing and was not aggravated by the employer. Additionally, the claimant failed to provide the employer with

evidence showing her health conditions were work-related health problems prior to her resignation.

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). A claimant must inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. See Iowa Admin. Code r. 871-24.26(6)b. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available. *Id.* Iowa Code § 216.6 (previously 601A.6) requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987).

The claimant did not provide the employer with a notice of intent to quit to allow the employer time to make an accommodation. Claimant did not allow for a dialogue between herself and the employer to find a reasonable accommodation. Claimant requested to work virtually but employer informed her that particular accommodation could not be met. Employer attempted to contact claimant multiple times to see if there were other accommodations that could be achieved to meet both parties' needs. Employer testified they had other accommodation requests from teachers and were able to work with them to find a mutual resolution that could accommodate their request while still allowing them to work. After July 31, 2020, claimant did not communicate with employer. As soon as employer informed her they would not be able to accommodate a request to work remotely, claimant would no longer work with employer to find a mutual resolution to allow her to continue working. Claimant did not respond to employer's correspondence and phone calls so an accommodation could not be found prior to her resignation. Claimant has not met her burden of proof to establish the voluntary quit was attributable to the employer under Iowa Admin. Code r. 871-24.26(6)b. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

Since the claimant voluntarily quit without good cause attributable to the employer the issue of able to and available to work is moot.

DECISION:

The March 31, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit the employment without good cause attributable to employer. Unemployment benefits are withheld in regards to this employer until such time as claimant is deemed eligible.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

July 2, 2021
Decision Dated and Mailed

cs/kmj

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 on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**