

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY K FUCALORO
Claimant

APPEAL NO: 18A-UI-09197-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 08/12/18
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 28, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 21, 2018. The claimant participated personally. Dr. Todd Jensen also testified on behalf of the claimant. The employer participated through Susan Chmelovsky, hearing representative. Bianca Richards testified. Navin Dutta attended as an observer. Claimant Exhibit A and Employer Exhibit 1 were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit the 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 full-time as a research remediation associate and was separated from employment on August 1, 2018, when she quit the employment (Employer Exhibit 1). Continuing work was available.

When the claimant quit her employment, she told her manager it was to pursue other job opportunities in possibly real estate or nursing. However, prior to quitting, the claimant became upset upon receiving her certificate of her 15 year anniversary and not having it publicly recognized by the employer, even though the employer referenced another employee's 3 year anniversary during a scheduled team "huddle" (Claimant Exhibit A).

Prior to separation, the claimant had been diagnosed with anxiety and depression (Claimant Exhibit A). The claimant took a leave of absence through FMLA in February 2018 to May 2018 to address her mental health. Dr. Jensen, who treated her, suggested she look for other employment to reduce stress in her life (Jensen testimony). He also acknowledged that

the claimant did have other contributing factors in her life affecting her anxiety and stress, but that her work environment contributed to over 50% of her issues (Jensen testimony). The claimant did not provide the employer documentation of Dr. Jensen's recommendation prior to quitting.

The claimant elaborated on several incidents in the workplace that contributed to her anxiety and depression. In 2017, on Ash Wednesday, the employer was working at a temporary location after a fire, and had catered in lunch. The claimant preferred to eat a light, non-meat lunch in observance, and told Ms. Richards, as the employer was serving barbeque, along with side dishes. Ms. Richards reportedly made some comment about not catering to religions, which upset the claimant. On Friday of the same week, which was also a non-meat day during Lent, the claimant and another non-meat eating employee were provided salads. The claimant did not report the comment to Ms. Richards' manager or human resources.

The claimant also reported that she had created a check processing system to help the employer, and had been asked to train a peer as her back up (Claimant Exhibit A). This coincided with the claimant's requests to become a designated analyst. A job opening for an analyst opened and both the claimant and her peer applied. She was not offered the position which caused her to fall into "extreme depression" (Claimant Exhibit A) because the peer she had helped trained was offered it instead.

In addition, upon returning to work after her FMLA, she felt she was treated differently. The claimant also raised concern about the team leader of her work group asking questions about the claimant's time off/vacation/FMLA. The claimant reported her concerns to Ms. Richards, who explained that the claimant was not being singled out but that part of this employee's job duties included ensuring adequate staffing so the questions being asked were appropriate. When the claimant told Ms. Richards she felt like others were treating her differently, she offered no other specific incidents.

Prior to quitting, the claimant did not make the employer aware of any specific condition that was causing her to contemplate quitting. She did not request any kind of accommodation. The claimant could have raised concerns with Ms. Richards, or her supervisor, Navin Dutta. She also could have gone to human resources. The claimant stated she did not go to management or human resources because it would not have mattered, and that she did tell her husband and doctor about her concerns at the workplace before quitting.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was 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. 871-24.25(21) and Iowa Admin. Code r. 871-24.25(22) provide:

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.
- (22) The claimant left because of a personality conflict with the supervisor.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer. 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.

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.* "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

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.

In this case, the claimant voluntarily quit her employment on July 25, 2018 after fifteen years of working in various positions for this employer. Prior to quitting, the claimant had become upset about comments made by her manager dating back to early 2017, but did not make the employer aware of the concerns. The claimant also became upset after being passed over a position as analyst when it was given to a co-worker she helped train. Given the stale dates of these complaints, they are not individually addressed as the claimant acquiesced to them by not raising concerns with her supervisor or quitting earlier when they arose.

She continued working, while experiencing stress, anxiety and depression until taking a leave of absence in February 2018 to address her mental health. Upon return, the claimant continued to work and once raised issue of why her co-worker would inquire about her time off from work, to which Ms. Richards explained the co-worker was responsible for staffing the team. The claimant did not raise any other concerns to management or human resources prior to quitting, to alert them of conditions that were causing her to contemplate leaving the employment. After the claimant spoke with her doctor who suggested she seek alternative employment to reduce stress, the claimant did not inform the employer she intended to quit unless the problems were corrected, nor did she request any reasonable accommodation, as required under Iowa Admin. Code r. 871-24.26(6)b.

The administrative law judge is sympathetic to the claimant and recognizes the emotions associated with leaving a long-term job. However, based on the evidence presented, the administrative law judge concludes the claimant did not meet the requirements of Iowa Admin. Code r. 871-24.26(6)b. The employer could not reasonably remedy issues in the workplace that it was unaware existed, in order to allow the claimant to retain employment. Therefore, the claimant's leaving the employment may have been based upon good personal reasons, but it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The August 28, 2018, (reference 01) decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn