

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLY DRAPER
Claimant

LINN MAR COMMUNITY SCHOOL DISTRICT
Employer

APPEAL 21A-UI-14677-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 23, 2021, (reference 02) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on August 24, 2021. Claimant participated and testified. The employer participated through Human Resources Generalist Heather Jordan. This appeal was conducted jointly with 21A-UI-14679-SN-T. Ms. Jordan and the claimant allowed the administrative law judge to consolidate these hearings to be heard at 2:00 p.m. The administrative law judge took official notice of the agency records.

ISSUE:

Was the separation 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 administrative law judge finds:

The claimant was employed as an on-call paraprofessional substitute teacher from February 11, 2019, until she was separated from employment on September 14, 2020, when she quit.

The claimant last took a substitute teaching assignment on March 6, 2020.

On March 13, 2020, the employer shut down for the remainder of the school year and offered only remote learning to its students. Paraprofessional substitute teachers cannot provide their services remotely.

On September 14, 2020, the employer began its subsequent academic year. Substitute teaching assignments were available after this date. The claimant opted to not take these assignments because she was generally afraid of working after the onset of the Covid19 pandemic. The claimant did not make this decision based on her opinion regarding the employer's Covid19 infection spread mitigation measures.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code section 96.5(1) 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.

Iowa Admin. Code r. 871-24.25 provides:

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:

Iowa Admin. Code r. 871-24.52(10)e provides:

(10) Substitute teachers.

e. A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.26(19).

Iowa Admin. Code r. 871-24.26(19) 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:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The 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). 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).

In this case, it is undisputed the claimant never orally or in writing expressed that she quit. However, as outlined above a substitute who elects to not receive further assignments is considered to have voluntarily quit under Iowa Admin. Code r. 871-24.52(10)e. While claimant's leaving 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.

DECISION:

The June 23, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant voluntarily left her 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.



Sean M. Nelson
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August 27, 2021
Decision Dated and Mailed

smn/ol