

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KATYAHOOHLEN PEASON**  
Claimant

**NORDSTROM INC**  
Employer

**APPEAL 21A-UI-22001-ED-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.4(3) – Able to and available to work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 16, 2021 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 30, 2021. The claimant, Katyahoohlen Peason participated personally with witness Shawnell Meyer. The employer, Nordstrom did not participate.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Was the claimant discharged for disqualifying job-related misconduct?  
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 was employed part time in inventory research for the employer. Her immediate supervisor was Jeremy Bender. Her last day worked was April 2 or 3, 2020 when a coworker tested positive for COVID-19. Claimant then decided that since employees were not wearing masks that she needed to get out to be safe and ensure that her significant other, Dave, did not get COVID-19 as he was being treated for cancer with chemotherapy. Claimant had been instructed that they should not be around anyone with COVID as it would be detrimental to Dave's health.

Claimant communicated with her manager the situation and he agreed that she could be off. Claimant communicated weekly as required by the employer's attendance policy to check on the availability of work. In June 2020 the employer required all employees to return to work. Due to Dave's health condition claimant would not return to work. On June 7, 2020 claimant applied for a leave of absence under the Family and Medical Leave Act (FMLA), which was denied by Sedgewick, the employer's third party FMLA administrator. On June 9, 2020 claimant called the employer's human resources department to request more time, which was denied.

Claimant was required to make a decision about returning to work while on the phone. Claimant chose not to return to work due to her significant other's cancer diagnosis.

### **REASONING AND CONCLUSIONS OF LAW:**

As a preliminary matter, the administrative law judge finds that the claimant was not terminated for misconduct.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit but not for good cause attributable to the employer. Benefits are denied.

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 provides, in relevant part:

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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

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).

It is the duty of the administrative law judge to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* When deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* In this case, this judge found that the employer's testimony was more credible than the claimant's.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2)j(1), (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23(10) provides:

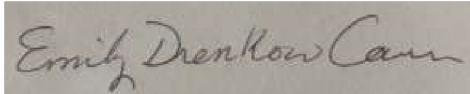
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Claimant and the employer agreed that she could take a voluntary leave of absence starting April 2 or 3, 2020. Claimant was off work until approximately June 7, 2020 the employer ended the leave of absence. During this time claimant was voluntarily unemployed. On June 7, 2020 claimant requested additional time off and was instructed by the employer to apply for FMLA, which was denied on June 9, 2020. Claimant was instructed to decide whether to return to work by the employer. Claimant chose not to return to work. Claimant failed to return at the end of the leave of absence and subsequently became unemployed. While the administrative law judge is sympathetic to the claimant's situation, due to her failure to return to work when the negotiated leave of absence ended, claimant is considered as having voluntarily quit and therefore is ineligible for benefits

**DECISION:**

The June 16, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.



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Emily Drenkow Carr  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

January 10, 2022

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Decision Dated and Mailed

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