

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARIE E OTTO**  
Claimant

**CASEY'S MARKETING COMPANY**  
Employer

**APPEAL 21A-UI-13437-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/14/21  
Claimant: Appellant (5)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.4(3) – Able and Available for Work

**STATEMENT OF THE CASE:**

On June 3, 2021, Marie Otto (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated May 28, 2021 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on March 23, 2020 for personal reasons.

A telephone hearing was held on August 4, 2021. The parties were properly notified of the hearing. The claimant participated personally. Casey's Marketing Company (employer/respondent) participated by Manager Angela Himes.

Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Is the claimant able and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer full-time as a store employee. Claimant's first day of employment was March 3, 2020. The last day claimant worked on the job was March 17, 2020. Claimant's doctor held her out of work due to the pandemic from that date and continuing until the benefit week ending July 31, 2021 when he released her to return to work. Claimant did not return to employer and offer her services upon being released.

Claimant filed a claim for benefits each week from the benefit week ending March 20, 2021 and continuing through the benefit week ending July 31, 2021.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated May 28, 2021 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on March 23, 2020 for personal reasons is MODIFIED with no change in effect.

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 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. 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.

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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- a. Obtain the advice of a licensed and practicing physician;
- b. Obtain certification of release for work from a licensed and practicing physician;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- d. Fully recover so that the claimant could perform all of the duties of the job.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". Id. (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

The administrative law judge finds claimant ineligible for benefits from the effective date of the claim and continuing until the benefit week ending July 31, 2021. This is because claimant was unavailable for work during this period due to her doctor holding her out of work. At the point her doctor released her to return to work, she did not return to employer and offer her services. Her failure to do so constitutes a voluntary quit without good cause. She is disqualified from benefits from the week ending July 31, 2021.

**While this decision denies regular, state benefits, the evidence indicates claimant may be eligible for federal Pandemic Unemployment Assistance (PUA). Further information on PUA, including how to apply, is set forth below.**

**DECISION:**

The decision dated May 28, 2021 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on March 23, 2020 for personal reasons is MODIFIED with no change in effect. She is ineligible for benefits from the effective date of the claim and continuing until the benefit week ending July 31, 2021. She is disqualified from benefits effective from that date due to the separation from employment. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

August 9, 2021  
Decision Dated and Mailed

abd/lj

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.