

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

SHAWNA L STEWART
Claimant

KWIK TRIP INC
Employer

APPEAL 23A-UI-00128-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/04/22
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Shawna L. Stewart, the claimant/appellant filed an appeal from the Iowa Workforce Development (IWD) December 29, 2022 (reference 01) unemployment insurance (UI) decision. The decision denied REGULAR (state) UI benefits because IWD concluded that Ms. Stewart voluntarily quit working for this employer on December 1, 2022 because she thought her work was detrimental to her health but she did not provide medical evidence that required her to leave working. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed notices of hearing to Ms. Stewart and the employer. A telephone hearing was held on January 25, 2023. Ms. Stewart participated personally. The employer participated through Emily Speropulos, human resources employment specialist. The administrative law judge took official notice of the administrative record and admitted Claimant's Exhibits A-C as evidence.

ISSUE:

Did Ms. Stewart voluntarily 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: Ms. Stewart began working for the employer in November 21, 2021. She worked as a full-time assistant kitchen manager at one of the employer's retail gas stations. Her employment ended on December 1, 2022.

In March 2022 Ms. Stewart was injured at work. An employee put chemicals into an oven and the chemicals injured Ms. Stewart's lungs. Ms. Stewart was taken to the emergency room and diagnosed with chemical pneumonia. In July 2022, Ms. Stewart was injured at work again. An employee turned off the fryer vent in the employer's kitchen and the kitchen filled with smoke. The smoke injured Ms. Stewart's lungs. Ms. Stewart was taken to the emergency room again and diagnosed with chemical pneumonia again. As a result of these injuries, Ms. Stewart was diagnosed with asthma. Ms. Stewart did not previously have asthma.

Ms. Stewart filed a worker's compensation (comp) claim and went on a leave of absence as of July 25. The worker's comp doctor released Ms. Stewart to return to work as of Friday,

October 21 with restrictions that she not be around smoke, steam, or chemicals that are sprayed and that she be allowed to take her inhaler when she needed it. Ms. Stewart returned to work on Monday, October 24. The employer assigned Ms. Stewart to work the cash register instead of the kitchen because of work restrictions. Ms. Stewart complained to the employer that customers' colognes and perfumes were bothering her lungs. The employer assigned Ms. Stewart to cleaning without chemicals e.g., wiping down surfaces with water only. However, Ms. Stewart's manager told Ms. Stewart that another employee would put chemicals into the water so Ms. Stewart would not have to do so. Ms. Stewart complained that the issue was not who put the chemicals in the water, but that chemicals were in the water. Ms. Stewart also complained many times that employees' perfumes and colognes were bothering her lungs. Ms. Stewart's manager would tell Ms. Stewart that the manager could not help Ms. Stewart, or Ms. Stewart could talk with the co-workers on her own, or call her worker's comp lawyer.

In mid-November 2022 the employer held a meeting for all employees. Ms. Stewart asked to miss the meeting so that she would not be around multiple people who would wear various scents. The employer told Ms. Stewart that the meeting was mandatory. Ms. Stewart began to get sick every few days because of the various smells at work. Ms. Stewart went to her personal doctor in late November. Ms. Stewart's doctor told her that the air at work was harming her lungs and advised her to stop working for the employer. The doctor wrote a letter saying the same. On December 1, Ms. Stewart gave the employer her doctor's letter and stating that she was quitting to protect her health and because the employer was not following her doctor-advised work restrictions. Ms. Speropulos testified that the employer could not dictate customers or other employees perfumes or colognes or limit Ms. Stewart's exposure to gas fumes.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Stewart's separation from employment was with 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(37) 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:

- (37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the

employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer.¹ A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention.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.³ "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer.⁴ Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the law.⁵

In this case, Ms. Stewart was injured on the job. Ms. Stewart filed a worker's comp claim and tried to get the employer to follow the work restrictions the worker's comp doctor recommended for her. The employer failed to do so. Eventually, Ms. Stewart's doctor advised her to stop

¹ Iowa Code § 96.6(2).

² *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

³ *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

⁴ *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer.").

⁵ *Raffety*, 76 N.W.2d at 788.

working because the air at work was injuring her lungs. Ms. Stewart followed her doctor's advice and quit to protect her health. Ms. Stewart's quit is attributable to the employer. Benefits are allowed.

DECISION:

The December 29, 2022 (reference 01) UI decision is REVERSED. Ms. Stewart voluntarily left her employment with good cause attributable to the employer. Benefits are allowed as long as no other decision denies Ms. Stewart UI benefits.



Daniel Zeno
Administrative Law Judge

January 31, 2023
Decision Dated and Mailed

scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.