

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALMASA KLINAC
Claimant

AS WE GROW LLC
Employer

APPEAL 23A-UI-08803-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/07/23
Claimant: Appellant (1R)**

Iowa Code § 96.5(1) – Voluntary Quitting – Resignation caused Discharge

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 12, 2023 (reference 03) unemployment insurance decision that allowed unemployment insurance benefits to the claimant from May 7, 2023 through May 20, 2023 but then denied benefits thereafter due to a voluntary quitting of work that was without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on October 3, 2023. The claimant participated personally. The employer participated through witnesses Amanda Fowles and Angie Houghman. Claimant's Exhibits A and B were admitted. Claimant stated that she did not want a language interpreter for the hearing. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Was the claimant's separation from employment disqualifying?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time daycare teacher at the employer's daycare. She began working for the employer on November 15, 2022. Her last day physically worked on the job was May 8, 2023.

On May 8, 2023, the claimant went to another daycare classroom to see some of the students. Without her realizing, one of the students she was caring for in the 18–24-month-old room had followed her into the 3-year-old room. Claimant gave hugs to the students in the 3-year-old room. She then left the room and went outside with the students from the room she was teaching in, which was the 18-24-month-old room. After being outside for approximately 5 minutes, a co-worker in the 3-year-old room notified her that she had left one of her students in the wrong room. When the claimant initially went into the 3-year-old room, her actions resulted in her room being out of ratio (teacher to student) according to State law.

At the end of her shift on Monday, May 8, 2023, the claimant was given a written discipline for leaving her room out of ratio and allowing one of her students to enter and be left in the wrong

classroom. Following her shift on May 8, 2023, the claimant texted the owner of the daycare, Ms. Fowles, that she was taking tomorrow (May 9, 2023) as her paid day off. Claimant's text then stated, "And this is also my two-week notice". After learning of the claimant's resignation, Ms. Fowles arranged for another worker to cover the claimant's scheduled shifts, beginning May 9, 2023, and thereafter. The claimant's ability to clock in via the website and application the employer used for timecard records was disabled for the claimant as of May 8, 2023.

Claimant attempted to return to work on May 9, 2023; however, she was unable to access the building because the code she used to get in had been disabled. Claimant tried to contact Ms. Fowles to speak further about her employment; however, claimant received communication from Ms. Fowles that she was no longer was employed by the employer. Claimant was paid either wages or vacation pay for May 9, 2023, even though she was not physically working on site as she used her accrued paid time off for those hours.

The issue of whether the claimant's wages/vacation pay earned on Monday, May 8, 2023, and May 9, 2023, are subject to deduction from her weekly benefits has not been investigated by Iowa Workforce Development. That issue of wages/vacation pay being deducted from claimant's benefit week ending 13, 2023 will be remanded to the Benefits Bureau for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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:

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. 871-24.25(38) 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment.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 Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer, or that another exception to the rule exists.³

In this case, the claimant texted the employer on May 8, 2023, that she was giving her two week notice. This establishes that the claimant intended to quit and her text to Ms. Fowles was her overt act in carrying out that intention. Claimant was upset that she had received discipline earlier that day. The employer then discharged the claimant prior to her two-week notice and proposed date of resignation. Therefore, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the claimant's proposed date of resignation, as the claimant's voluntary quitting of employment with this employer was without good cause attributable to the employer.⁴

Benefits are allowed effective claimant's original claim date of May 7, 2023, through the benefit week-ending May 20, 2023 (subject to any deduction for wages earned as set forth in the remand below). Benefits are denied effective May 21, 2023 (the week in which the claimant was scheduled to last work according to her resignation) until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount after her May 22, 2023, separation date, and provided she is otherwise eligible.

DECISION:

The September 12, 2023 (reference 03) unemployment insurance decision is affirmed. Claimant voluntarily quit without good cause attributable to the employer effective May 22, 2023, but was discharged on May 8, 2023. Unemployment insurance benefits are allowed from May 7, 2023, through May 20, 2023, provided the claimant remained otherwise eligible.

¹ *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989).

² *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

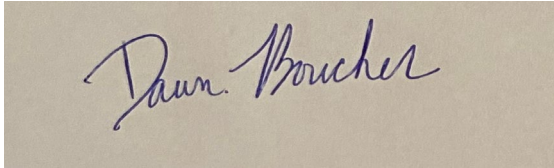
³ Iowa Code § 96.6(2).

⁴ Iowa Admin. Code r. 871-24.25(38).

Because the claimant voluntarily quit without good cause attributable to the employer, benefits are denied effective May 21, 2023, and continuing until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount after her May 22, 2023 separation date, and provided she is otherwise eligible.

REMAND:

The issue of whether the claimant's wages/vacation pay earned on May 8, 2023 and May 9, 2023 are subject to deduction from her weekly-benefit amount is remanded to the Benefits Bureau of Iowa Workforce Development for an investigation and determination.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive style on a light-colored, textured background.

Dawn Boucher
Administrative Law Judge

October 5, 2023
Decision Dated and Mailed

db/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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

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 file a petition for judicial review in district court.

2. If you do not file 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 www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

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. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

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 no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

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.