

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JENNY BLACKBURN
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CAMANCHE, IA 52730-1246**

**KWIK TRIP, INC.
% TALX UCM SERVICES
PO BOX 283
SAINT LOUIS, MO 63166**

**CASE NO. 21IWDUI2059
IWD APPEAL NO. 21A-UI-06957**

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515) 281-7191***

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:

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

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your 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.

ONLINE RESOURCES:

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNY BLACKBURN
Claimant

KWIK TRIP, INC.
Employer

**CASE NO. 21IWDUI2059
IWD APPEAL NO. 21A-UI-06957**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/10/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 5, 2021 (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on April 27, 2021 and later completed on June 2, 2021. The claimant, Jenny Blackburn, participated personally, and had one witness, Rachel Grimes. The employer, Kwik Trip, Inc., participated through Lisa Thompson, claimant's supervisor.

ISSUES:

Whether the separation was a layoff, discharge for misconduct, or voluntary quit without good cause.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as an associate. She began working for this employer in mid November 2019 and her employment ended on January 6, 2021. Her job duties included food preparation for the baked goods section among other things.

Claimant contends that she was subjected to a hostile work environment. Claimant testified that a co-worker named Markay Welch, criticized her on a daily basis and made her work more difficult. Specifically, claimant testified that Ms. Welch would highlight comments issued from the cook that claimant believed were about her and talk about the comments in front of other employees. Claimant also alleged that Ms. Welch would purposely hide materials that claimant needed in the refrigerator which created extra work for the claimant. In addition, claimant believed that management did not take her complaints about Ms. Welch seriously. Finally, claimant believed that she was badgered to come back to work after she had fallen on the ice and injured her back.

Although claimant testified that she was criticized every day by Ms. Welch, other than one specific comment, claimant could not identify any specific criticism that was directed at her. In addition, the comments from the cook were general comments for every employee, they were not directed solely at the claimant and were issued weekly. Further, in regards to the materials that claimant believed were being hidden by Ms. Welch, multiple employees had access to the materials and claimant admitted that she did not know if Ms. Welch had actually hidden the materials.

Ms. Thompson testified that Ms. Welch and the claimant are strong-willed people who did not get along well. Contrary to claimant's belief, Ms. Thompson did take claimant's complaints seriously and had meetings with Ms. Welch to discuss the situation. In addition, Ms. Thompson stated that she did not "badger" claimant about returning to work after her back injury, but merely inquired if she was going to return to work on the date claimant initially provided as her return date. When claimant did not feel she could return on her initial return date, Ms. Thompson requested that claimant let her know her new return date. Finally, claimant never complained to Ms. Thompson or other management about a hostile work environment while she was employed with the employer.

Claimant was not going to be laid off or discharged from employment. There was continuing work available to her had she not quit.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code §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.

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. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Claimant determined she could no longer work with Ms. Welch. Claimant had an intention to quit and carried out that intention by tendering her written resignation and leaving. As such, 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).

Iowa Admin. Code r. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

As such, if claimant establishes that she left due to intolerable or detrimental working conditions, benefits would be allowed. Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). “Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer. *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.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, claimant was not required to give the employer any notice with regard to the intolerable or detrimental working conditions prior to her quitting. However, claimant must prove that her working conditions were intolerable or detrimental.

While it is undisputed that claimant and Ms. Welch did not get along, the examples claimant testified about do not amount to an intolerable or detrimental workplace. Claimant stated that she was being critiqued by Ms. Welch on a daily basis. However, claimant could only identify one instance where Ms. Welch criticized or made a derogatory comment. In addition, the lists from the cook were not directed personally to claimant, but to all the workers in general. There was no evidence presented that there were threats of violence or gossiping about claimant herself. Given the facts of this case claimant has failed to prove that under the same circumstances a reasonable person would feel compelled to resign. See *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). Rather, the circumstances in this case seem to align with the conclusion that claimant was unable to work with Ms. Welch and that claimant was dissatisfied with her work environment in general. These are not good cause reasons attributable to the employer for claimant to have quit.

Iowa Admin. Code r. 871-24.25(6) 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 § 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 § 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:

(6) The claimant left as a result of an inability to work with other employees.

Iowa Admin. Code r. 871-24.25(21) 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 § 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 § 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:

(21) The claimant left because of dissatisfaction with the work environment.

As such, the claimant's voluntary quitting was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The March 5, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.



Rachel D. Morgan
Administrative Law Judge

06/03/2021

Decision Dated and Mailed

rm/aa