

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**AMANDA J VOGEL**  
Claimant

**CARE INITIATIVES**  
Employer

**APPEAL 15A-UI-12279-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/11/15**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 29, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 20, 2015. Claimant participated. Employer participated through hearing representative, Edward Wright, and administrator, Tanner Mackey.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a certified nurse's aide (CNA) from November 16, 2012, and was separated from employment on October 3, 2015, when she quit.

Around February 2015, claimant complained to Mr. Mackey about a particular charge nurse regarding two separate instances. Mr. Mackey spoke with the charge nurse regarding each instance and there were no further similar incidents. In September 2015, claimant also made a complaint about the charge nurse regarding an incident involving a school fundraiser that was not related to the employer. Mr. Mackey spoke with the charge nurse and explained that the fundraising issues could not be discussed at work.

On September 15, 2015, claimant spoke with Mr. Mackey about her work schedule and not wanting to work with the charge nurse. Mr. Mackey gave claimant options of switching to a new shift or she could voluntarily move to part-time and then she would not be scheduled with the charge nurse. On September 16, 2015, claimant chose to move to part-time. Mr. Mackey accepted her move to part-time. Mr. Mackey told claimant she needed to finish the schedule as it is written until October 1, 2015. Mr. Mackey told claimant that she would not work alone with the charge nurse for the remainder of the schedule until October 1, 2015. The employer did not have claimant work alone with the charge nurse the remaining schedule in September 2015. Claimant was assigned to work on September 30, 2015, and was not supposed to be taken off the schedule. Claimant failed to work on September 30, 2015 and she did not notify the

employer she was not going to work. Claimant went part-time starting with the new schedule that started on October 1, 2015. The employer worked as best as they could to not have her work with the charge nurse after October 1, 2015. On October 3, 2015, claimant's last day she worked, she did not work with the charge nurse. On October 6, 2015, claimant was given a final corrective action for a no-call/no-show on September 30, 2015. Mr. Mackey explained that this was a final warning, but she was not being terminated. Mr. Mackey explained to claimant that a second no-call/no-show would result in termination.

On October 7, 2015, claimant sent Mr. Mackey an e-mail saying she was resigning from her job effective immediately. The employer accepted her resignation. There was work available for claimant had she not quit.

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

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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.

Iowa Admin. Code r. 871-24.25(6), (28) and (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 § 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.

(28) The claimant left after being reprimanded.

(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.

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). 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).

Claimant resigned on October 7, 2015, effective immediately. The employer accepted her resignation. Claimant argued that she felt harassed by the charge nurse and this harassment led her to resign on October 7, 2015. Claimant argued this harassment was a good cause reason attributable to the employer for her to resign. This argument is not persuasive. Claimant testified that the charge nurse cussed at her a couple times around February 2015 and also around this time inferred that she was a bad mother. Claimant made a complaint about each incident to Mr. Mackey. Mr. Mackey then spoke with the charge nurse about each incident and no further similar incidents occurred. Claimant also testified that the charge nurse was harassing her regarding a school fundraising Facebook group the charge nurse was in charge of. The group had no affiliation with the employer and thus the employer has no authority over the group. However, Mr. Mackey did speak with the charge nurse and told her not to bring any issues from the group to work. Claimant also had discussions with Mr. Mackey about not working with the charge nurse anymore. On September 15, 2015, Mr. Mackey gave claimant a couple of options to reduce her interaction with the charge nurse at work. On September 16, 2015, claimant chose to go part-time so she would not be scheduled with the charge nurse anymore. The employer allowed claimant to go part-time, but Mr. Mackey informed claimant it would not happen until the new schedule started on October 1, 2015 and she needed to work the remaining September 2015 schedule as it was currently set. The employer did take additional steps to insure that claimant did not work alone with the charge nurse during the remaining September 2015 schedule. Claimant was scheduled to work on September 30, 2015, but failed to show up for work. Claimant also failed to notify the employer she was not going to work. An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Claimant's argument that she did not think she was going to have to work that day is not persuasive. Claimant had been scheduled to work on September 30, 2015. When claimant decided to go part-time, Mr. Mackey

clearly explained to claimant that she had to work the remaining September 2015 schedule and she would go part-time starting with the new October 1, 2015 schedule. As a result of claimant's no-call/no-show on September 30, 2015, she received a final warning corrective action on October 6, 2015. Claimant then resigned on October 7, 2015.

The claimant's decision to quit because she did not agree with the corrective action for her no-call/no-show and she did not want to work with a particular charge nurse was not for a good cause reason attributable to the employer. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

**DECISION:**

The October 29, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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