

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATY ELLIOTT
Claimant

HAWKEYE CARE CENTER OF DUBUQUE
Employer

APPEAL 20A-UI-12597-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/21/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On October 9, 2020, Katy Elliot (claimant) filed an appeal from the October 2, 2020, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with Hawkeye Care Center of Dubuque (employer) for personal reasons. The parties were properly notified about the hearing held by telephone on December 9, 2020. The claimant participated personally. The employer participated through Amy Turner, HR Specialist. The Employer's Exhibit 1 was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was re-employed part-time as a CNA beginning on December 13, 2019, and was separated from employment on June 27, 2020, when she quit. The employer is a facility that provides medical treatment and care to its residents, who are dependent adults.

The employer has taken precautions with the ongoing COVID-19 pandemic including, but not limited to, providing facemasks and shields to all employees and requiring employees to change into clothes kept in the facility when reporting to work. The employer provides laundering services for the clothes left in the facility. They have also allowed employees who do not feel safe to leave their position with the understanding there would be work available to them when they returned. Despite the employer's precautions, they had two employees test positive in March and April. Staff were notified of the positive cases and the claimant continued to work for the employer.

On June 23, the claimant requested to change to a PRN, or as-needed, employee. As part of the change, the claimant agreed to work a minimum of 16 hours a month and remain available through July 8, specifically for the holiday weekend on July 4 and 5. The employer agreed to give the claimant an extended leave of absence, from July 8 through August 10, so she could visit family in Michigan.

On June 26, the claimant learned that a physical therapist, with whom she had worked the week before, tested positive for COVID-19. The claimant worked her shift. The following morning she contacted Amy Turner, HR Specialist, and stated she no longer felt safe working for the employer. She explained she would be visiting her grandparents in Michigan and did not want to risk infecting them. Turner said she needed to report for her shifts and work the agreement or she could lose her job. The claimant elected to quit employment. Turner told the claimant that when she returned she could reapply and there would be work available for her. The claimant returned to Iowa on August 28, but did not contact the employer and ask for additional work.

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.

Iowa Code section 96.5(1)f 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:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

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:

...

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

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

...

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

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.

It is the duty of the administrative law judge as 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 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. *Id.* 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 believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The 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).

The claimant has not met the burden of proof to establish that she voluntarily left with good cause attributable to the employer. The contention that she left due to intolerable or detrimental working conditions is not persuasive. The employer was taking reasonable precautions to make the work environment staffed by essential workers as safe as possible. The claimant works in the medical field and, while no one foresaw the current situation, there was an inherent understanding that she would be dealing with ill people and contagions as a CNA. Accepting that the claimant left for compelling personal reasons, the absence was longer than ten days and she did not return to the employer to seek reemployment when she returned to Iowa. Therefore, the separation was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The October 2, 2020, reference 01, unemployment insurance decision is affirmed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Stephanie R. Callahan
Administrative Law Judge

December 18, 2020
Decision Dated and Mailed

src/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to self-certify for PUA to determine your eligibility under the program.** Additional information on how to self-certify for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.