

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

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**JULIE A ACHENBACH**  
Claimant

**APPEAL NO. 24A-UI-08257-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COUNCIL BLUFFS COMM SCHOOL DIST**  
Employer

**OC: 07/14/24  
Claimant: Appellant (2)**

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Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

On September 19, 2024, Julie Achenbach (claimant) filed a timely appeal from the September 16, 2024 (reference 01) decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the IWD deputy's conclusion that Ms. Achenbach voluntarily quit on August 23, 2024 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 4, 2024. Ms. Achenbach participated. Kelly Fischer, Benefits Specialist, represented the employer. Exhibits 1 and A were received into evidence.

**ISSUES:**

Whether the claimant voluntarily quit without good cause attributable to the employer.  
Whether the claimant voluntarily quit for the sole purpose of accepting other or better employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

In August 2024, Julie Achenbach (claimant) accepted an offer of full-time employment as a full-time Para Educator Specialized (paraprofessional) with the Council Bluffs Community School District. Ms. Achenbach has an employment background in direct care work. At the time of the interview, the questions the employer put to Ms. Achenbach included the question of whether Ms. Achenbach was comfortable with changing a diaper and otherwise assisting students with toileting. Based on this series of questions, the employer led Ms. Achenbach to believe the employment would include elements similar to the direct care work Ms. Achenbach had previously performed for other employers.

After Ms. Achenbach interviewed with the District, a District recruiter, Tammy Nielsen, told Ms. Achenbach she thought Ms. Achenbach would best be suited for a paraprofessional position within the Specialized Behavior Services (SBS) program at Thomas Jefferson High School. Ms. Achenbach did not know what that meant but deferred to Ms. Nielsen's judgment.

Ms. Nielsen did not explain the duties or that the duties would differ from the duties the employer discussed with Ms. Achenbach during the interview. The employer offered Ms. Achenbach a full-time position in the Specialized Behavior Services (SBS) program at Thomas Jefferson High School and Ms. Achenbach accepted the offer of employment. The full-time position offered a starting wage of \$18.14 an hour and work hours of 7:30 a.m. to 3:00 p.m., Monday through Friday. Ms. Achenbach planned to commute to the employment from her home in Tabor, Iowa, south of Glenwood. The commute would take about 40 minutes.

On August 16, 2024, Ms. Achenbach participated in District training regarding de-escalation and non-violent crisis intervention.

On August 21, 2024, Ms. Achenbach participated in a general District orientation for paraprofessionals.

On August 22, 2024, Ms. Achenbach participated in the District's back-to-school meeting for paraprofessionals.

On Friday, August 23, 2024, the first day of school, Ms. Achenbach reported to Thomas Jefferson High School to commence performing her work duties. The school operations manager for Thomas Jefferson High School was to be Ms. Achenbach's supervisor. Ms. Achenbach anticipated she would be assisting students with disabilities in a manner similar to what had been described during her interview. The employer provided Ms. Achenbach with a binder containing outdated photos of the several students Ms. Achenbach was assigned to assist throughout the school day. Ms. Achenbach quickly realized that the type of employment she was now in differed dramatically from the type of employment she had applied for and the type of employment the employer referenced at the interview. The employer had not informed Ms. Achenbach that she would be assigned throughout the day to interact closely with disruptive, destructive, anti-social students actively demonstrating such behavioral issues. Beginning with the first class of the day, Ms. Achenbach witnessed disruptive student outbursts and disruptive and destructive student behavior that included students damaging ceiling tiles with a ball. Some of the assigned students made it clear they wanted nothing to do with Ms. Achenbach. A couple of teachers warned Ms. Achenbach to keep her distance from some of the students to avoid triggering a student outburst. Ms. Achenbach completed her duties on the first day of school to the best of her ability. The District had not shared with Ms. Achenbach that she could request a different Para Educator Specialized assignment within the District. Ms. Achenbach did not ask for a different assignment.

On Saturday, August 24, 2024, another prospective employer, Nishna Productions, contacted Ms. Achenbach to discuss potential full-time employment as a direct care worker. The Nishna representative had reviewed Ms. Achenbach's application to that employer. The Nishna recruiter told Ms. Achenbach that she wanted to hire Ms. Achenbach. However, the Nishna recruiter told Ms. Achenbach that Ms. Achenbach would have to participate in an interview, would have to undergo a background check, and would have to undergo pre-employment drug testing before she could start in the employment. The proposed full-time employment would be in Glenwood, nine miles from Ms. Achenbach's home. The proposed work would involve afternoon, evening and weekend work hours, and would pay \$20.00 an hour.

On the morning of Monday, August 26, 2024, Ms. Achenbach notified Council Bluffs Community School District that she was leaving the District employment effective August 26, 2024 and that she had taken another position closer to her home. Ms. Achenbach notified the special education teacher she had been assisting. Ms. Achenbach called the building operations

manager. Ms. Achenbach emailed her resignation to Ms. Nielsen, the District recruiter. Ms. Achenbach made her quit effective immediately.

On September 6, 2024, Mr. Achenbach participated in an interview with Nishna Productions. Ms. Achenbach thereafter participated in the required background check and drug testing. On September 25, 2024, Ms. Achenbach commenced the new full-time employment with Nishna Productions.

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

The administrative law judge notes that the employer's sole participant in the appeal hearing lacked personal knowledge of the claimant's employment and separation from employment. The employer elected not to present testimony from individuals with personal knowledge.

Iowa Code section 96.5(1)(a) 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

Iowa Admin. Code r. 871-24.26(23) 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:

(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

The evidence in the record establishes an August 26, 2024 voluntary quit with good cause attributable to the employer. The evidence establishes a bait-and-switch situation, regardless of whether the misrepresentation was intentional or unintentional on the employer's part. The claimant applied for a position assisting students with disabilities. At the interview, the employer asked questions that painted a picture of the claimant performing the sort of direct care and support work the claimant had previously performed. The employer then offered a wholly different type of work without reasonably and appropriately notifying the claimant of the distinction between what had been discussed at the interview and what was being offered. The type of extremely challenging and potentially dangerous paraprofessional work in the Specialized Behavior Services (SBS) program at Thomas Jefferson High School is not the type of work a reasonable person applying for a paraprofessional position would ordinarily expect. Given the profound distinction between the two types of paraprofessional work, the employer had an obligation to provide the claimant with information necessary for the claimant to understand what she was stepping into. The employer's omission of necessary information amounted to a misrepresentation of the type of work to be performed. The claimant reasonably and promptly removed herself from the employment when she learned the actual employment differed substantially from what was discussed at the interview. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

As indicated above, this was not a voluntary quit solely for the purpose of accepting other or better employment. In addition, the August 26, 2024 contact from the new prospective employer was not a bona fide offer of employment. It was instead an invitation to interview, an invitation to participate in a background check, and an invitation to participate in drug testing, all as prerequisites to an offer of employment to be made later, if at all.

**DECISION:**

The September 16, 2024 (reference 01) decision is REVERSED. The claimant voluntarily quit the employment on August 26, 2024 with good cause attributable to the employer. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.



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James E. Timberland  
Administrative Law Judge

October 29, 2024  
Decision Dated and Mailed

**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  
6200 Park Ave Suite 100  
Des Moines, Iowa 50321  
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>.

**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  
6200 Park Ave Suite 100  
Des Moines, Iowa 50321  
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 adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**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.