

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA BENNETT

Claimant

DIA APPEAL NO. 22IWUI0020

IWD APPEAL NO. 21A-UI-16952

FAREWAY STORES, INC.

Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/11/21

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 28, 2021 (reference 02) unemployment insurance decision that denied benefits based upon her separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on September 16, 2021. The claimant, Amanda Bennett, participated in the hearing. Eric Pelzer and Stephanie Rohrer testified for the employer. The administrative file was made a part of the record. The employer submitted documents that were made a part of the record.

ISSUES:

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

FINDINGS OF FACT:

Claimant began working for the employer, Fareway Stores, Inc., on December 1, 2020, as a cashier. She worked part time and had a varying schedule. The employer determined that the claimant voluntarily quit work on February 25, 2021. (Rohrer testimony).

In March 2021, the claimant learned that her child was on a 14-day quarantine and school was shut down. The claimant was living in Estherville, which was four hours from her child. Her child had a high-risk blood disorder, so the claimant needed to be with him to help with his care. On March 1, 2021, the claimant called the Fareway store before store hours and informed an employee named Jeremiah that she would not be at work. On March 3, 2021, she again called the store and spoke with store employee, William, and informed him that she would not be returning, as she was leaving town for a personal emergency. The claimant did not dispute that she voluntarily quit her job, but wanted to explain that it was due to circumstances beyond her control. (Bennett testimony).

Human Resources Generalist, Stephanie Rohrer, explained that the employer had a three day no call no show policy, which resulted in an automatic quit. If an employee was going to be absent, it was his or her responsibility to inform management. Employee Jeremiah was not management, but did share the March 1, 2021 message with management. Assistant store manager, Eric Pelzer, was not aware of the March 3, 5, or 6 absences, all days the claimant

was scheduled to work. This resulted in three "no-call no-shows" for the claimant, which the employer considered an automatic quit. (Rohrer, Pelzer testimony).

REASONING AND CONCLUSIONS OF LAW:

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(20) 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.

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 notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added 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 recently concluded that, because the intent-to-quit requirement was added to rule 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. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

The claimant does not dispute that she made the choice to leave employment, but explained that she did so because her child was in quarantine from school. While it is understandable the claimant believed she had no choice but to take time off of work because her child's school was closed, a need to care for her child and supervise his education is not good cause *attributable to the employer*. The claimant failed to contact her employer to discuss options or report the time

off work. The claimant failed to call her employer on March 3, 5, or 6, 2021, and speak to management, which resulted in three "no-call no-shows."

The claimant voluntarily chose to sever the employment relationship. The claimant's concerns are understandable and important; however, these reasons are specific to the claimant, and do not constitute good cause that is attributable to the employer according to Iowa law.

DECISION:

The July 28, 2021 (reference 02) unemployment insurance decision is affirmed as to the finding that the 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.

Kathleen M. O'Neill

Kathleen M. O'Neill
Administrative Law Judge

September 22, 2021
Decision Dated and Mailed

Case Title: BENNETT V. FAREWAY STORES INC

Case Number: 22IWDUI0020

Type: Proposed Decision

IT IS SO ORDERED.

Kathleen M. O'Neill

Kathleen O'Neill, Administrative Law Judge