

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

SANDRA L SHAMP
Claimant

HY-VEE INC
Employer

APPEAL 24A-UI-07422-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/11/24
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

STATEMENT OF THE CASE:

The claimant, Sandra L. Shamp, filed an appeal from the August 7, 2024, (reference 07) unemployment insurance decision that denied benefits effective July 12, 2024, based upon her voluntary resignation. The parties were properly notified about the hearing. A telephone hearing was held on September 9, 2024, at 3:00 p.m. The claimant participated and testified. The employer participated through Human Resources Manager Wanette Moore. Brian Thomas, a store director, observed the hearing. The employer was represented by Kelly Ray, an unemployment insurance representative. Exhibit A was received as evidence.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without 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 employed part-time as a night stocker from August 25, 2020, until she was separated from employment on July 12, 2024, when she quit.

The employer has an employee handbook. The employee handbook explains how an employee can file an internal complaint to human resources and management at the site location. It also allows for the employee to file a complaint to its corporate human resources department.

In October 2020, the claimant complained about a coworker. This coworker ran into her with a grocery cart, which damaged her leg. The employer paid the worker's compensation claim related to the claimant's leg injury. A few weeks later, the employer separated the two employees. This coworker has bothered the claimant since then, but she has not reported these additional incidents to management.

On June 7, 2024, the claimant was working for the employer when she had an allergic reaction to chemicals a third party company used to clean the kitchen. The claimant went to the emergency room. She was released to return to work without restriction after June 12, 2024.

On July 5 2024, the claimant went to the employer's worker's compensation doctor. The claimant was released to return to work without restriction. The claimant stated her belief that the chemical had damaged her lungs and larynx. The employer's worker's compensation doctor gave her a referral to see a pulmonologist and an allergist. The claimant did not ever use these referrals.

After meeting with the worker's compensation doctor, the claimant sent an email to Ms. Moore stating that she would be interested in working on the dayshift, so she would not have to be in the presence of the chemical again. Ms. Moore referred this matter over the employer's worker's compensation carrier. Ms. Moore did not respond immediately because she thought the claimant was going to use the referrals to specialists before returning.

On July 12, 2024, the claimant sent an email to Store Operations Manager Trey Simmons and Human Resources Manager Wanette Moore stating that she was quitting effective immediately. She added that she was afraid of being forced to return to work and she would be exposed to the chemical again.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant voluntarily left the employment on July 12, 2024, without good cause attributable to the employer.

The decision in this case rests, at least in part, on the credibility of the witnesses. 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.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

In particular, I do not find the claimant quit due to the circumstances with the coworker that occurred years before. Ms. Moore read into the record the claimant's explanation that gave only the chemical environment issue as a reason for quitting.

Iowa Code section 96.5(1) 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.

Iowa Admin. Code r. 871-24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. **Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer.** The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. *Suluki v. Employment Appeal Board*, 503 N.W.2d 402 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. *Polley v. Gopher Bearing Company*, 478 N.W.2d 775 (Minn. App. 1991).

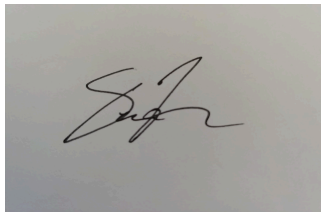
I find the claimant had an allergic reaction connected with the chemical she was exposed to in her environment. I do not find the claimant has provided evidence that this allergic reaction "made it impossible" for her to "continue in employment because of serious danger to" her health. The claimant was released to return to work by both the worker's compensation doctor and the emergency room doctor that she saw separately. To the extent the claimant had restrictions, she has not provided them. Such a record does not demonstrate that it was impossible for her to return. The claimant concedes she did not go to the pulmonologist or the allergist referred by the worker's compensation doctor to get a result that suggested more dire harm.

The claimant's resignation email on July 12, 2024 was the first sign that the employer had the claimant would not return due to this issue. The employer was still getting information about how serious of an issue this would be. All information received so far had said that the claimant could return. Inasmuch as the claimant did not give the employer an opportunity to resolve her

complaints prior to leaving employment, the separation was without good cause attributable to the employer. This is especially true because the claimant had past experience with using the corporate human resources complaint mechanism. The employer resolved these complaints. Benefits are denied.

DECISION:

The August 7, 2024 (reference 07) unemployment insurance decision is AFFIRMED. The claimant quit on July 12, 2024, 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.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

September 12, 2024
Decision Dated and Mailed

smn/scn

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 Avenue 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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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 Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.