

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

JACQUELINE A AVILA

Claimant

APPEAL NO: 18A-UI-07278-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASCENTRA CREDIT UNION

Employer

OC: 06/10/18

Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jacqueline Avila filed an appeal from the June 28, 2018, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Avila voluntarily quit on May 30, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on July 25, 2018. Ms. Avila participated. Matthew DeBisschop represented the employer and presented additional testimony through Nick Hanna. Exhibits A, B and C were received into evidence.

ISSUE:

Whether Ms. Avila voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jacqueline Avila was employed by Ascentra Credit Union as a full-time Account Representative (teller) from 2015 until May 30, 2018, when she voluntarily quit. On May 17, 2018, Ms. Avila emailed a resignation memo to Matthew DeBisschop, Human Resources Manager, and provided May 31, 2018 as her anticipated last day of employment. Ms. Avila subsequently elected to end the employment one day early due to a personal appointment set for May 31, 2018. Ms. Avila's decision to leave the employment was triggered by an annual evaluation she received on May 8, 2018 from her immediate supervisor, Teisha Stewart, Senior Account Representative. Ms. Stewart had joined Ascentra in November 2017 and became Ms. Avila's supervisor at that time.

In connection with the May 8, 2018 performance evaluation, Ms. Avila was upset that her score in three evaluation areas out of 14 were lower than scores she had previously received. Ms. Stewart rated Ms. Avila as average on the teamwork metric, above average in the personal growth metric, and average in the staff interaction metric. Ms. Avila had received a score of "exceptional" in each of the three areas in connection with a prior evaluation. However, the most recent evaluation factored a July 2017 email from Ms. Avila to a coworker that included expletives. After Ms. Avila received the evaluation, she submitted a complaint to

Mr. DeBisschop about the evaluation score. Ms. Avila then submitted her resignation notice a week later, after erroneously concluding that Mr. DeBisschop was ignoring her complaint.

In making her decision to leave the employment, Ms. Avila also considered additional concerns she had about Ms. Stewart's supervision of the account representatives. These concerns arose as soon as Ms. Stewart became Ms. Avila's supervisor and continued after Ms. Avila returned from maternity leave on April 30, 2018. Ms. Avila was concerned about minor procedural changes Ms. Stewart had made to the daily duties, about what she perceived to be an unstable and stressful work environment, about what she perceived as a lack of training, and about what she perceived as inadequate communication regarding scheduling breaks, days off and so forth. Though Ms. Avila asserts that changes made by Ms. Stewart resulted in Ms. Avila having to work longer and later hours, this was not the case.

REASONING AND CONCLUSIONS OF LAW:

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 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 Code section 96.6(2) provides, in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving

section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Administrative Code rule 871-24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005).

The weight of the evidence in the record establishes a voluntary quit without good cause attributable to the employer. Ms. Avila's resignation was triggered by her belief that she had received an unfair evaluation. The weight of the evidence fails to support that perspective. The evaluation was an inherently a subjective assessment of Ms. Avila's contribution to the workplace. A reasonable person would anticipate that a new supervisor might view things at least slightly different than the previous supervisor. The evaluation factored a concern that had arisen during the year that preceded the evaluation. Nothing about the evaluation indicates an intolerable and/or detrimental situation that would prompt a reasonable person to leave the employment. Ms. Avila may have been reasonably concerned about Mr. DeBisschop's apparent delay in responding to her complaint about the evaluation, but that too would not have prompted a reasonable person to leave the employment. Rather, it might have prompted a reasonable person to follow up with Mr. DeBisschop to learn his timetable for providing a response. Ms. Avila's other concerns amount to a general dissatisfaction with Ms. Stewart's supervision and the work environment under Ms. Stewart's supervisions. None of the changes that came with Ms. Stewart's supervision of the workplace amounted to substantial changes in the conditions of the employment or intolerable and/or detrimental working conditions that would have prompted a reasonable person to leave the employment.

Because the evidence in the record establishes a voluntary quit without good cause attributable to the employer, Ms. Avila is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Avila must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The June 28, 2018, reference 01, decision is affirmed. The claimant voluntarily quit the employment on May 30, 2018 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs