

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LYNN M MIZER
Claimant

CHATHAM OAKS
Employer

APPEAL 21A-UI-03732-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/20
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 13, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on March 30, 2021. Claimant Lynn M. Mizer participated and testified. Employer Chatham Oaks participated through executive director of community based services Jackie Smith Duggan, associate director of community based services Ronita LeBeau, and director of human resources and finance Audrey Meyer. Claimant's Exhibits A-H were received. Employer's Exhibit 1 was received.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a direct support professional from September 4, 2018, until November 20, 2020, when she quit.

On November 17, 2020, claimant developed COVID-19 symptoms. She notified her employer who recommended she contact the University of Iowa Hospitals to get tested for COVID. On November 18, 2020, claimant exchanged text messages with her supervisor LeBeau regarding her symptoms and notified her that her test results were negative. On November 19, 2020, claimant reported for work despite feeling ill because LeBeau indicated she should report as the test was negative. Upon arriving at work, claimant had a temperature and was sent home. Claimant was not scheduled to work again until November 21, 2020.

On November 20, 2020, claimant had a telehealth appointment scheduled to see if she needed a second COVID test. LeBeau informed claimant that she would plan for claimant to report to work the next day unless she tested positive for COVID. (Exhibit G) Employer's COVID-19 policy states that an employee should not return to work until they had been fever-free for 24

hours, and claimant's medical provider recommended the same. (Exhibits E and F). Claimant would not have been fever free by her scheduled shift the next morning and she did not want to put the employer's clients at risk, so she emailed employer her resignation effective immediately. (Exhibit 1) Smith Duggan contacted claimant to discuss her concerns but claimant's mind was made up that she would not be returning.

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.

Iowa Code section 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 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. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

Iowa Admin. Code r. 871-24.26(2) 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:

(2) The claimant left due to unsafe working conditions.

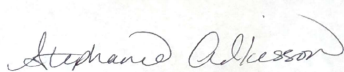
Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A 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).

Claimant has not demonstrated she quit her job due to unsafe working conditions. Claimant was concerned for the clients because she believed she would be required to work while she was still ill and had symptoms. However, the evidence does not support that belief. Claimant's supervisor indicated she would plan to have claimant work the next day if her test was negative, but claimant submitted her resignation prior to any decision regarding claimant's return to work.

Claimant was previously sent home from work when she had a fever, and there was no indication she would be expected to work with a fever if she still had one the next day. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The January 13, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left his employment 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.



Stephanie Adkisson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

April 5, 2021
Decision Dated and Mailed

sa/kmj

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 due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.