

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HUNG LE
Claimant

KUM & GO LC
Employer

APPEAL 21A-UI-12007-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/24/21
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 April 14, 2021, (reference 02) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on July 15, 2021. Claimant Hung Le participated and testified. Employer Kum & Go, LC participated through assistant manager Phil Shavers.

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 store associate from December 5, 2019, until March 20, 2021, when he quit.

In early-March 2021, claimant provided his two weeks' written notice to employer. He did not provide a reason to employer for leaving his employment, but based on previous conversations with claimant employer believed he was leaving due to some personal physical issues. However, claimant left his employment because he was concerned about contracting COVID-19 at work. He believed employer was not taking adequate preventative measures because employer would not install a plastic shield at the cash register like other employers did. Employer provided masks and maintained a frequent disinfectant schedule at the store. Claimant was not prohibited from using more protective face protection. Claimant voiced his concerns to management, but it did not install a plastic shield. Claimant did not tell employer that he was leaving his employment because of unsafe practices.

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:

(21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.26(4) 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.

(4) The claimant left due to intolerable or detrimental 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).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. 871 IAC 24.26(4). While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that he considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address his concerns. *Hy-Vee Inc. v. Employment Appeal Board*,

710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting “attributable to the employer.”

Claimant was dissatisfied with the employer’s mitigation efforts during the COVID-19 pandemic. However, he has not demonstrated that employer engaged in so few mitigation efforts that it created a dangerous or intolerable work environment for claimant. He has not shown that employer failed to mitigate the risk to its employees to such an extent that it rendered claimant’s working environment objectively intolerable or unsafe. Further, claimant never explained to employer that he would resign because of employer’s practices, nor did not cite his belief that the workplace was unsafe as his reason for resigning. While claimant’s concerns about his health may have factored into his decision to leave his employment, claimant has failed to establish he resigned for a good cause reason attributable to employer. As such, benefits are denied.

DECISION:

The April 14, 2021, (reference 02) 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 he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Stephanie Adkisson
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July 26, 2021
Decision Dated and Mailed

sa/lj