

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROMMEL CARLOS E GUZMAN
Claimant

APPEAL 16A-UI-11860-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERBAKE FOODS
Employer

**OC: 10/02/16
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 26, 2016 (reference 01) unemployment insurance decision that denied benefits based upon claimant voluntarily quitting without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on November 16, 2016. The claimant, Rommel Carlos E. Guzman, participated personally. Interpreter services were provided to claimant by CTS Language Link. The employer, Interbake Foods, participated through Human Resource Generalist Emily Ehlers.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as machine operator. He began working for this employer on October 20, 2015. His last day physically worked on the job was September 16, 2016. This employer operates a bakery. Claimant's scheduled shift was eight hours long; however, there were times where mandatory overtime was required. Mandatory overtime was a four-hour shift either at the beginning or end of the claimant's normally scheduled shift. Claimant was aware of the mandatory overtime requirement when he began his employment with the company.

At the end of September the claimant's infant child was ill. The child was hospitalized for five days and then again for two days. Claimant was scheduled to work for twelve days in a row and then received two days off. This schedule of working 12 days in a row with two days off was from August 22, 2016 to September 18, 2016. This schedule was put in place so all employees would not be scheduled to work over Labor Day weekend. In 2015 there were several days when claimant had to work 12 days in a row due to the mandatory overtime.

The employer has a written attendance and disciplinary policy. Claimant received a copy of the policy upon hire. Once an employee accumulated five points, they would receive discipline.

The progressive discipline policy stated that claimant would receive a final warning prior to discharge. Claimant had received four points when he decided to voluntarily quit.

Claimant spoke to the human resources department and was informed that if he took a voluntary leave of absence, he would be assessed one point for the entire duration of the leave of absence. Upon receiving five points, claimant would receive a final written warning.

Claimant believed that he would be discharged if he received another point. Instead of being discharged, claimant decided to voluntarily quit. He stopped coming to work after September 16, 2016. Claimant did not return to work because he wanted to spend more time with his family and wanted to find a job that did not have as many hours per week for him to work.

After noticing that claimant had not reported to work for several days, Rachel, an employee in the human resources department, telephoned claimant and told him that he was approved for a voluntary leave of absence due to his ill child. This leave was granted retroactively and was for an indefinite period of time. Rachel again reached out to claimant by telephone in October to determine the date he would return to work from the voluntary leave of absence and claimant did not return the call. The employer was unaware that the claimant believed he was separated from employment until he filed for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). In this case, claimant had an intention to quit and carried out that intention by failing to return to work for any further shifts and by failing to contact the employer to tell them when he intended to return to work.

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).

In this case claimant voluntarily quit because he did not want to work as many hours as he was being scheduled to work because he wanted to spend more time with his family. His schedule was not a change in the contract of hire because claimant understood when he was first hired that he would have to work mandatory overtime. Further, there were many times in 2015 when he worked 12 days in a row.

Iowa Admin. Code r. 871-24.25(23) 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 § 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 § 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

While claimant's leaving the employment 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 must be denied.

DECISION:

The October 26, 2016 (reference 01) unemployment insurance decision is affirmed. 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.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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