

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACEY RENSBERGER
Claimant

PRIME CONSTRUCTION SERVICES LLC
Employer

APPEAL 21A-UI-21756-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/22/21
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

On October 1, 2021, Prime Construction Services LLC (employer/appellant) filed an appeal from the decision dated September 29, 2021 (reference 01) that allowed unemployment insurance benefits from August 22, 2021 until August 28, 2021 based on a finding that claimant resigned effective August 27, 2021 without good cause attributable and was terminated on August 24, 2021 because of the planned resignation.

A telephone hearing was held on November 19, 2021. The parties were properly notified of the hearing. Employer participated by Controller Kristine Cledenger. Stacey Rensberger (claimant/respondent) did not register a number for the hearing or participate.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?
- III. Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time project coordinator. Claimant's first day of employment was May 19, 2021. The last day claimant worked on the job was August 24, 2021. Claimant was discharged on that date.

Claimant gave notice of an intent to resign on August 18, 2021 with an effective date of August 27, 2021. After that time employer felt claimant had a negative attitude and that it was better to separate sooner. It terminated her on August 24, 2021 as a result.

Claimant resigned to work elsewhere. It is unclear whether she accepted and performed work elsewhere after resigning. Claimant has not received benefits since the date of separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated September 29, 2021 (reference 01) that allowed unemployment insurance benefits from August 22, 2021 until August 28, 2021 based on a finding that claimant resigned effective August 27, 2021 without good cause attributable and was terminated on August 24, 2021 because of the planned resignation is **AFFIRMED**.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

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. 871-24.25 provides in relevant part:

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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or

detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

In this case, the claimant did not have the option of remaining employed nor did he express intent to terminate the employment relationship. Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Employer has carried its burden of proving claimant's departure from employment was voluntary. Claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer. She also has not shown that she accepted work elsewhere and performed work in that employment. She is therefore disqualified from benefits from the effective date of resignation. However, benefits are allowed from August 22 until August 28, 2021, as employer terminated claimant's employment early due to her planned resignation. Employer has not shown the discharge was for disqualifying misconduct.

The issue of whether claimant was overpaid need not be addressed, as claimant has not received benefits since the date of separation.

DECISION:

The decision dated September 29, 2021 (reference 01) that allowed unemployment insurance benefits from August 22, 2021 until August 28, 2021 based on a finding that claimant resigned effective August 27, 2021 without good cause attributable and was terminated on August 24, 2021 because of the planned resignation is **AFFIRMED**.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515) 478-3528

November 30, 2021 _____
Decision Dated and Mailed

abd/abd

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.