

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DALE C TURNER
Claimant

CONTECH ENGINEERED SOLUTIONS LLC
Employer

APPEAL 17A-UI-11024-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/2417
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code §96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 25, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 15, 2017. The claimant participated personally. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. Claimant Exhibit A was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

Note to claimant: Additional information about food, housing, and other resources can be found by dialing 211 or at www.211iowa.org.

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: The claimant was employed full-time as a riveter operator and was separated from employment on September 22, 2017, when he quit the employment by requesting a voluntary layoff. Continuing work was available.

The claimant has a history of degenerative arthritis in his spine and prior to his separation, also contracted the flu. As a result, the claimant missed twice the permitted days due to absences, and felt he was unable to perform work. He was not advised to quit in lieu of being terminated. He was not advised by a doctor to quit the employment.

When the claimant made the employer aware of his condition, he was offered a leave of absence and short-term disability. The claimant determined a short-term disability would pay

less than being off work due to a layoff and collecting unemployment benefits, and declined the offer for a leave of absence. Historically, the employer during slow periods, would allow employees to volunteer for layoff, but as of September 22, 2017, the employer did not offer the claimant a layoff or have a scheduled layoff. Rather the claimant told the employer he was taking a voluntary layoff, which the employer construed to mean as a quit. The undisputed evidence is that upon taking care of his medical condition, the claimant is permitted to reapply and return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 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(20) 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

Iowa Admin. Code r. 871-24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

Iowa Admin. Code r. 871-24.25(28) 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:

(28) The claimant left after being reprimanded.

The claimant has the burden of proof to establish he quit with good cause attributable to the employer, according to Iowa law. 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. 871 IAC 24.25. Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the claimant who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the weight of the evidence in the record establishes claimant has not met his burden of proof to establish he quit for good cause reasons within Iowa law.

The credible evidence presented is the claimant voluntarily quit to address personal health conditions. His decision to quit was not based upon the advice of his treating physician or supported by medical documentation. When the employer learned of the claimant's personal medical issues, the claimant was offered a leave of absence and short term disability, which would allow reduced compensation but preserve employment. The claimant declined stating he wanted a voluntarily layoff. However, the employer was not requesting employees take a layoff and continuing work was available. Therefore, the claimant's decision to voluntarily lay himself off when work was available does not constitute a layoff for a lack of work for purposes of unemployment insurance eligibility. The administrative law judge is sympathetic to the claimant, but based upon the evidence concludes the claimant's leaving the employment may have been based upon good personal reasons, but it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The October 25, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn