

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EVAN J JOHNSON

Claimant

APPEAL 16A-UI-11017-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROSS MARKETING INC

Employer

OC: 06/19/16

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 September 29, 2016 (reference 04) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on October 25, 2016. The claimant, Evan J. Johnson, participated personally. The employer, Ross Marketing Inc., did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance record.

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 a telephone sales representative. He began working for this employer on Monday, August 29, 2016 and his employment ended on Wednesday, August 31, 2016 when he voluntarily quit. He tendered a written resignation to his supervisor. His job duties included making calls to members to sell products. He was in the process of completing training.

Claimant interviewed with this company and accepted the job on Friday, August 26, 2016. The interview was approximately ten minutes long. Claimant understood that he would be on the telephone in a call center. Claimant did not realize at the time of accepting employment that the telephone calls would be sales oriented rather than customer service oriented. Claimant believed he would have performed poorly in this job; however, he did not begin making telephone calls to members at the time of his quitting. Claimant accepted this job because he did not want to refuse a job and become disqualified for unemployment insurance benefits by virtue of a job refusal. Continuing work was available had claimant not quit.

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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case claimant tendered his written resignation to his supervisor on Wednesday, August 30, 2016, which was accepted. Claimant believed that he would perform poorly in a sales oriented environment and that is the reason claimant voluntarily quit. As such, this case must be analyzed as a voluntary quit case and not a discharge case. Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.25(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

Iowa Admin. Code r. 871-24.25(33) 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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

Claimant argues that there was a change in the contract of hire which was a good-cause reason for his voluntary quit.

Iowa Admin. Code r. 871-24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). The change to the terms of hire must be substantial in order to allow benefits. In this case, the claimant knew he was hired as a telephone sales representative. The fact that claimant believed the position would include more sales than customer service is not substantial, especially in light of the fact that the claimant never completed training and didn't even begin performing telephone calls on his own in this position. Claimant has failed to prove a *substantial* change in the contract of hire. 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 September 29, 2016 (reference 04) 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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