

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

WILLIAM H LUNDBOHUM
Claimant

APPEAL NO. 15A-UI-05395-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LIBERTY HOLDINGS INC
Employer

OC: 01/04/15
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

William Lundbohum (claimant) appealed a representative's April 27, 2015, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Liberty Holdings (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 12, 2015. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 1, 2014, as a full-time driver. The claimant graduated from the Iowa School for the Deaf. He did not require hearing aids to drive, obtain his Commercial Drivers' License or work for the employer. The claimant had reduced hours in the winter and filed for unemployment insurance benefits with an effective date of January 4, 2015.

On February 11, 2015, the employer told the claimant to have a DOT (Department of Transportation) physical even though the regulations did not require the claimant to have one for his job. At the physical a doctor told the claimant he could not pass his DOT physical without purchasing expensive hearing aids and, therefore, would lose his license in three months. The claimant did not understand the doctor because he did not need the DOT physical. He was afraid of losing his license. He informed the employer of the issue. He told the employer he was quitting on February 28, 2015, to avoid losing his license. The claimant's last day of work was February 28, 2015. The claimant is able and available to work. His CDL does not expire until 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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.

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.

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). The claimant's intention to voluntarily leave work was evidenced by his words and actions. When an employee quits work because he believes his performance is not to the satisfaction of the employer and the employer has not requested he to leave, his leaving is without good cause attributable to the employer. The claimant left work because he thought his failure to pass the DOT physical or failure to purchase expensive hearing aids would result in his termination, even though the employer did not request him to leave. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's April 27, 2015, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css