

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTHONY L STEEN
Claimant

HOME INSTEAD
Employer

APPEAL NO. 23A-UI-09026-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/27/23
Claimant: Appellant (5)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On September 21, 2023, Anthony Steen (claimant) filed a timely appeal from the September 18, 2023 (reference 01) decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant was discharged on August 16, 2023 for conduct not in the best interests of the employer. After due notice was issued, a hearing was held on October 9, 2023. Claimant participated. Kandy Gould represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 23A-UI-09477-JT-T and the parties waived formal notice regarding that appeal number. Exhibit A was received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO, KCCO, NMRO, the reference 01, 02 and 04 decisions, and the administrative law judge decision in Appeal Number 23A-UI-08893-S2-T.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

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

Home Instead (employer) is an Arkansas business that provides non-nursing in-home support services to elderly clients who wish to "age-in-place" at home rather than enter a care facility.

The claimant was employed by Home Instead as a Care Provider from August 2, 2023 until August 16, 2023, when the claimant voluntarily quit. Prior to commencing the employment, the claimant participated in an interview process, during which time the employer outlined the duties associated with the Care Provider position. The duties involved assisting an individual client with activities of daily living, including hygiene, bathing, cooking and light housekeeping. The employer explained to the claimant that the pay varied from client to client and could vary from \$11.00 to \$16.25. The claimant provided an availability schedule indicating he was available to work from 8:00 a.m. to 6:00 p.m.

The claimant began working with his first and only client on August 11, 2023. The assignment included full-time work hours. Before the claimant accepted the assignment, the employer outlined the duties associated with the assignment and ensured the claimant had the requisite skills to safely and competently care for the client. Before the claimant accepted the assignment, the claimant amended his availability to 8:00 a.m. to 8:00 p.m. three days a week to match the usual work hours associated with the assignment. The assignment paid \$14.25 an hour, which was within the range the employer had previously discussed with the claimant. The client in question was an elderly gentleman on the cusp of needing hospice nursing care. Home Instead does not provide nursing care, does not provide hospice nursing care, but coordinates the non-nursing services it provides with care provided by third-party nurse services. The claimant accepted the assignment and worked his first 8:00 a.m. to 8:00 p.m. shift with the client on August 11, 2023. The duties in the assignment included assisting the client as needed with showering and toileting, assisting the client with moving from bed to chair, assisting the client with getting dressed, assisting with cooking dinner, and observing the client take his medications. The claimant returned for a second shift on August 14, 2023, but started work at 7:00 a.m. so that he could receive training from a more experienced caregiver. The claimant returned for a third shift on August 15, 2023 and completed that shift. During the claimant's brief time with the client, the claimant thought he observed a notable decline in the client's cognitive and physical abilities.

The claimant was next scheduled to work on August 18, 2023, but elected to separate from the employment after the August 15, 2023 shift. On the morning of August 16, 2023, the claimant sent an email message to the employer in which message he stated that he had experienced a "life-changing" event, was sorry that he had to quit, but would no longer be able to continue in the Home Instead employment. The claimant did not elaborate in his message to the employer. The employer responded to accept the claimant's resignation and noted the absence of a notice period. Though the claimant did not share this with the employer, the claimant was uncomfortable working with the client in light of the client's state of decline and impending need to hospice nursing care. The claimant advises that the employment experience triggered memories of the claimant's father's passing. The claimant did not consult with a medical or mental health professional prior to quitting the employment. The claimant did not request to be assigned to a different client. The employer had multiple clients in need of services during times when the claimant had indicated he was available. The claimant had not accepted other employment.

On September 18, 2023, Iowa Workforce Development issued the reference 01 decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant was discharged on August 16, 2023 for conduct not in the best interests of the employer. On September 21, 2023, the claimant filed his appeal from the reference 01 decision. In the appeal, the claimant asserted he had chosen to leave the employment and had not been discharged. On September 22, 2023, IWD Benefits Bureau issued a reference 04 decision that pertained to the same August 16, 2023 separation but deemed the separation a voluntary quit without good cause attributable to the employer. The claimant's appeal from reference 04 decision is addressed in Appeal Number 23A-UI-09477-JT-T.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a

separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 871-24.25.

A 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. See Iowa Admin. Code rule 871-24.25(37).

The evidence in the record establishes the claimant voluntarily quit and was not discharged from the employment. The employer continued to have work available. The claimant elected to end the employment and submitted a written resignation, which the employer accepted.

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.

A claimant is presumed to have voluntarily quit without good cause attributable to the employment, when the claimant left because of dissatisfaction with the work environment or when the claimant left rather than perform assigned work as instructed. See Iowa Admin. Code rule 871-24.25(21) and (27).

On the other hand, when a claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment, the quit is deemed for good cause attributable to the employer. Iowa Admin. Code r. 871-24.26(23).

In addition, quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

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.

“Change in the contract of hire” means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The evidence in the record establishes a voluntary quit from full-time employment without good cause attributable to the employer. The employer in no manner misrepresented the employment, the client, or the work duties. A reasonable person who sought and accepted work as an in-home care provider would expect to interact with client in a condition necessitating such services. There was no change in the contract of hire. Asking the claimant to report for work an hour early on one day for training does not constitute a change in the contract of hire. The wage for the assignment was in the upper half of the range the employer had previously mentioned to the claimant. The duties in the assignment were the duties the employer had outlined and the duties a reasonable person would expect to perform in such employment. The claimant's discomfort was not the product of intolerable and/or detrimental working conditions that would have prompted a reasonable person to leave the employment. The claimant decided for personal reasons that he was uncomfortable performing the duties he had accepted and elected to voluntarily separate from the assignment and the employment, rather than seek a different assignment with the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other requirements. The employer's account shall not be charged for benefits.

DECISION:

The September 18, 2023 (reference 01) decision is MODIFIED as follows without change to the claimant's eligibility or the employer's liability for benefits. The claimant voluntarily quit the employment on August 16, 2023 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

October 11, 2023
Decision Dated and Mailed

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.