

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NOAH R GUTHRIE
Claimant

MWACR, L.L.C.
Employer

APPEAL 21A-UI-19822-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On September 7, 2021, the claimant/appellant filed an appeal from the August 25, 2021, (reference 03) unemployment insurance decision that disallowed benefits based on claimant voluntarily quitting. The parties were properly notified about the hearing. A telephone hearing was held on November 18, 2021. Appeal numbers 21A-UI-19823-CS-T, 21A-UI-19824-CS-T, 21A-UI-19825-CS-T, 21A-UI-19826-CS-T, 21A-UI-19827-CS-T and 21A-UI-19828-CS-T were heard together and created one record. Claimant participated at the hearing. Employer participated through Office Manager, Lora Miller. The employer called as a witness Damond Drake. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: In June 2020, claimant was initially hired as a subcontractor for employer to paint apartments. The employer was happy with claimant's work and hired claimant as an employee on July 10, 2020. Claimant was hired as a full-time Lease Agent and Maintenance Staff. Claimant was paid a monthly salary of \$3,000.00 for his work. Claimant set his own schedule, however, he needed to be available to meet for showings, sign leases, and attend to tenants' maintenance issues. Eventually this led to claimant working seven days a week. Claimant became overwhelmed and unhappy with the work that he was required to perform. Claimant was required to use his personal vehicle to perform work for the employer and the claimant had to use his own personal cellphone for work. Claimant wanted to return to being a painter for the employer.

On October 26, 2020, claimant had a meeting with Lora Miller. During the meeting claimant informed Ms. Miller that he would be quitting and starting his own painting business. Ms. Miller asked if claimant would give them two weeks before he quit and the claimant informed her that he was quitting immediately. Ms. Miller became upset with claimant and left the room. The claimant followed after Ms. Miller and eventually a conversation with claimant, Ms. Miller, and

Randy Miller occurred. In the conversation claimant informed the Millers that he wanted to go back to painting and that he would love to continue working for them in the painting capacity with his new business. Mr. Miller rebuffed claimant's statement and rhetorically asked claimant why they would want him to work for them when he was quitting to pursue his own painting business. Claimant left the meeting and did not return to continue working for the employer. Claimant was separated from employment on October 26, 2020. Claimant had no prior written or verbal warnings prior to his separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

Iowa Code section 96.5(2)a provides:

Causes for disqualification.

An individual shall be disqualified for benefits:

2. *Discharge for misconduct.* If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Code section 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(19)) 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:

(19) The claimant left to enter self-employment.

While the employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the

separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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 decision in this case rests, at least in part, on the credibility of the witnesses. 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 witnesses 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 employer's version of events to be more credible than the claimant's recollection of those events. In this case the claimant became dissatisfied with the work that he was required to perform when he was hired as an official employee of the employer. Claimant wanted to return to painting so he decided to start his own business where he could paint. The claimant informed the employer that he was quitting immediately and wanted to work for them in the capacity of painting for them. Claimant was wanting to work for the employer in a subcontractor role for his business, not as an employee of the business. This is a voluntary quit and is not a discharge. While claimant's leaving 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 are denied.

DECISION:

The August 25, 2021, (reference 03) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to 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.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

December 27, 2021
Decision Dated and Mailed

cs/scn

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits but who were 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa is the week ending June 12, 2021. You may be eligible for benefits incurred prior to June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.