

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT M PERRY
Claimant

NPC INTERNATIONAL INC
Employer

APPEAL 18A-UI-10301-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/16/18
Claimant: Appellant (3)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 5, 2018 (reference 01) unemployment insurance decision that allowed in part and denied in part, benefits based upon a determination that claimant resigned his position and was discharged immediately upon resigning. The parties were properly notified of the hearing. A telephonic hearing was held on October 29, 2018. The claimant, Robert M. Perry, participated and was represented by Stuart Higgins, Attorney at Law. The employer, NPC International, Inc., participated through Krystina Lorah, Area General Manager; Laura Love, People Development Leader. Employer's Exhibits 1 through 4 and 6 through 8 was received and admitted into the record without objection. Exhibit 5 was received and was excluded from the record as it was duplicative of Exhibit 1.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a restaurant general manager, from November 1, 2014, until October 2, 2018, when he resigned. Claimant submitted a written letter of resignation on September 18, 2018. In this letter, claimant stated he was resigning from his restaurant general manager position effective October 2, 2018. On September 19, claimant was told that his services were no longer needed and his resignation was accepted effective immediately. However, claimant was paid his full salary through October 2, 2018. Continued work was available, had claimant not resigned from his position.

On September 6, 2018, claimant received a final written warning. (Exhibit 1) Claimant was given multiple areas for improvement, including scheduling, OEF, cleanliness, and cash management. Claimant was told that further policy infractions or failure to improve as specified

in the final written warning would result in termination. Claimant felt he could not improve to the employer's satisfaction. Therefore, he decided to resign from his employment.

In his resignation letter, claimant requested to transfer to a driver position at the Ashworth store. Claimant explained that he had talked with Stan Vetterick, restaurant general manager of the Ashworth store, and Vetterick told him that he would have a position for him at his store. Claimant did not talk to his management about this transfer request. Lorah, his area general manager, first learned about this request in the resignation letter. She reached out to Vetterick but was not able to reach him. Lorah then called Vetterick's area general manager, Terry Golson, and spoke to him about claimant's transfer request. Golson reported that there were no open driver positions at the store where claimant wanted to transfer, so claimant could not transfer there. The employer also expressed concern about claimant's ability to successfully perform the duties of the driver position.

The administrative record shows that claimant reported some wages when filing his weekly continued claims for benefits. Claimant reported \$303.00 in wages for the one week ending September 22, 2018. He did not report any wages for the weeks ending September 29, 2018, or October 6, 2018.

REASONING AND CONCLUSIONS OF LAW:

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

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 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.

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). Here, claimant resigned from his position shortly after receiving a final written warning. Claimant did not present evidence sufficient to prove that the expectations set forth in the final

written warning were impossible to attain. While claimant may have been upset by the warning and felt it was unfair or unjustified, the average person in his situation would not have felt similarly compelled to quit his employment given the circumstances.

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). Claimant prepared a written resignation and delivered it to the employer. While claimant may have wished for a transfer to another store, he did not formally request a transfer as an accommodation for a disability and he did not have permission from the area general manager to transfer to the Ashworth store. Claimant has not met his burden of proving that his separation was with good cause attributable to the employer. Benefits are withheld effective October 2, 2018, the effective date of claimant's resignation.

Ordinarily, when an employer discharges a claimant prior to the proposed date of resignation, a claimant is entitled to benefits from the last day of work until the proposed date of resignation. Iowa Admin. Code r. 871—24.25(38). That administrative rule functions to protect employees who resign and are fired because they resigned by allowing them to receive unemployment benefits only for the weeks they intended to work prior to the resignation date. In this case, claimant was not allowed to work through his resignation date. However, the employer paid him through this date. Therefore, claimant does not fall within the scope of rule 871—24.25(38).

DECISION:

The October 5, 2018 (reference 01) unemployment insurance decision is modified in favor of employer/respondent. Claimant separated from 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn