

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT S ANDERSON
Claimant

HY-VEE INC
Employer

APPEAL 20A-UI-03550-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/26/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On April 29, 2020, Robert Anderson (claimant/appellant) filed a timely appeal from the April 24, 2020 (reference 07) unemployment insurance decision that found he was ineligible for benefits.

A telephone hearing was held on May 19, 2020. The parties were properly notified of the hearing. The claimant participated personally. Hy-Vee Inc. (employer/respondent) participated by Representative Kenneth Pess. HR Manager Meridith Wood participated as a witness for employer.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

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:

Claimant worked for employer part time as a shopper. In this position, claimant collected and prepared online orders at employer's distribution center. Claimant's first day of employment was November 15, 2019. The last day claimant worked on the job was March 14, 2020. Claimant's immediate supervisors were Assistant Directors Ryan, Bobby, and Clint. Claimant separated from employment on March 17, 2020. Claimant quit on that date.

Claimant quit because of concerns about the safety of the distribution center. Claimant informed Wood in an email sent March 17, 2020, that he was "too freaked out to comeback [sic] to work, just letting you know." Wood responded to the email by saying, "thank you." Wood did not inquire with claimant about what specifically he was "freaked out" about or how those issues may be addressed so that he could continue working.

Claimant had previously inquired with his immediate supervisors about whether employer would be taking preventative measures to prevent employee exposure to COVID-19. They informed claimant they were not aware of any such measures being put in place. Claimant did not press the matter further with his supervisors; seek further information from individuals above his supervisors; or request an accommodation, leave of absence, or similar action from the human resources department.

Claimant has several health conditions, including asthma and a seizure disorder. Claimant's supervisors were generally aware that claimant had some health issues, but they were not specifically aware of these conditions or that claimant may be particularly susceptible to COVID-19 due to those issues. Claimant did not speak with - nor was he advised to quit by - a physician prior to quitting.

Claimant was particularly concerned by having to use a headset while he was working. Others used the same headset as him. Claimant did not request the headsets be regularly cleaned or disinfected. The last several days he worked, he did "wipe down" his headset himself. Claimant was also concerned because approximately 350 worked at the distribution center, including 75-80 people at a time, and trucks were often coming and going.

Shortly after claimant quit, employer got direction from corporate to take extra cleaning precautions, as well as implement travel and sick leave policies designed to prevent exposure to COVID-19.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the April 24, 2020 (reference 07) unemployment insurance decision that found claimant disqualified from receiving benefits is **AFFIRMED**.

Iowa Code section 96.5(1)a 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.

Iowa Admin. Code r. 871-24.25 provides in relevant part:

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:

- (21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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:

- (2) The claimant left due to unsafe working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried his burden of proving the voluntary leaving was for good cause attributable to employer.

Claimant voluntarily quit because of concerns about the safety of the distribution center. The administrative law judge understands claimant's concerns, particularly with regard to the shared headset. However, claimant made extremely limited efforts to make employer aware of his health issues and related concerns about the pandemic, let alone to request his concerns be addressed or notify employer that he would be forced to resign if they were not addressed. Furthermore, claimant did not seek the advice of a physician or a reasonable accommodation from employer prior to quitting. While Wood could have explored the issue further with claimant when she received his resignation email, she had very little information to go off at that point due to claimant's failure to adequately raise the issues with management.

It is very difficult to find an employee's quitting is with good cause attributable to employer when the employee has not made the employer aware of the issues leading to the quit and provided employer a reasonable opportunity to address those issues. Claimant's quitting here is more akin

to quitting due to a dissatisfaction with the work environment. Quitting for that reason is presumed to be without good cause, and the administrative law judge finds it was without good cause in this instance. A reasonable person in claimant's position would not find the working conditions so unsafe, intolerable, or detrimental as to justify quitting in these circumstances, particularly without first reporting the issues to employer and requesting they be addressed.

Because claimant's quitting was without good cause attributable to employer, benefits must be denied.

DECISION:

The April 24, 2020 (reference 07) unemployment insurance decision that found claimant disqualified from receiving benefits is **AFFIRMED**. Claimant is ineligible for benefits until he earns wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

May 21, 2020
Decision Dated and Mailed

abd/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 are currently 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>.