

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GARY M PADAVICH
Claimant

BW GAS & CONVENIENCE RETAIL LLC
Employer

APPEAL 19A-UI-03413-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/31/19
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
871 IAC 24.10 – Employer Participation in the fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the April 18, 2019, (reference 02) decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 14, 2019. Claimant did not participate. Employer participated through Katie Bundt, Human Resources Generalist, and (representative) Sean Coulter, Store Manager.

ISSUES:

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was hired to work part-time as a sales clerk beginning on August 3, 2018 through December 8, 2018, when he voluntarily quit. When the claimant was hired he worked primarily second shift. Mr. Coulter became the store manager in late November 2018. He was having trouble finding someone to work the overnight or third shift. The claimant was scheduled to work overnight shifts. The claimant was taking a medication that made it difficult for him to work overnight shifts. Claimant spoke to Mr. Coulter and explained to him that problem he was having working third shift. Mr. Coulter agreed to change the claimant back to the second shift, but he told the claimant he would be required to work his next two scheduled overnights as he did not have time to find him a replacement. Claimant became angry that Mr. Coulter would not make the change immediately and began swearing at Mr. Coulter. Claimant then told Mr. Coulter that he was "done" and hung up the phone. Claimant did not report again for his next scheduled work shifts.

While the fact-finders' decision did allow benefits, claimant has not made any weekly claims and no unemployment insurance benefits have been paid to him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25(18) 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:

(18) The claimant left because of a dislike of the shift worked.

Iowa Admin. Code r. 871-24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

There is no evidence that the claimant was promised he would only have to work second shift. Claimant was temporarily assigned to work third shift while the employer worked to cover that shift permanently. When claimant brought his problems with working third shift to Mr. Coulter's attention, Mr. Coulter agreed to move him back to second shift, but required the claimant to work the next two or three scheduled third shifts as he had no one else to cover. The claimant became angry that Mr. Coulter would not immediately grant his request so he quit. An employer may assign employees to cover shift they normally do not work to meet the business needs of

the company. Claimant had been granted his request, but was only asked to work out his remaining third shift schedule. The employer's request was reasonable under all of the circumstances. Claimant's voluntary quitting under these circumstances was without 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). Claimant saying he was "done" and his failure to show up for his next scheduled work shift is clear indication he voluntarily quit his employment. Benefits are denied.

Generally, courts and administrative tribunals do not decide issues when the underlying controversy is moot. *Rhiner v. State*, 703 N.W.2d 174, 176 (Iowa 2005). "A case is moot if it no longer presents a justiciable controversy because the issues involved are academic or nonexistent." *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 442 (Iowa 1983).

As the claimant has not made any weekly continuing claims, nor been paid any unemployment insurance benefits since filing his claim for benefits, whether he has been overpaid benefits and whether the employer's account is subject to charges for those benefits is moot.

DECISION:

The April 18, 2019, (reference 02) decision is reversed. The claimant voluntarily left his 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. The claimant has not been paid any unemployment insurance benefits, thus the issue of whether he has been overpaid and whether the employer's account is subject to charges for benefits is moot.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs