

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCOTT E SHARP
Claimant

RAIL.ONE USA CORP
Employer

APPEAL 15A-UI-12222-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/11/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Scott Sharp (claimant) filed an appeal from the October 30, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination he voluntarily quit his employment by refusing to quit working which was not a good cause reason attributable to Rail.One USA, Corp (employer). The parties were properly notified about the hearing. A telephone hearing was held on November 19, 2015. The claimant participated on his own behalf. The employer participated through Office Assistant Tracy Meggers. Employer's Exhibits 1 through 3 were received.

ISSUE:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Production Operator beginning on December 1, 2014, and his last day worked was October 7, 2015. The claimant had worked in multiple positions throughout his employment. His most recent position required him to monitor the stacks of railroad ties weighing approximately 150 tons. Some of the railroad ties were leaning and would occasionally fall over. The claimant had reported the unsafe working conditions to his supervisor and other managers.

On October 7, 2015, the claimant left for his lunch break. He proceeded to have a panic attack at the thought of returning to his job duties. He did not return to work that afternoon. He left voice messages for his supervisor over the next four work days, but never received a phone call back. He then received a certified letter in the mail stating he was discharged for too many attendance points after not returning on October 7th and being a no-call/no-show on October 8th.

The claimant never refused to monitor the stacks of railroad ties when asked to do so by his supervisor. If he had refused to perform that job duty, he would have been moved to another position inside. However, the claimant enjoyed his job and did not want to move to an inside position.

REASONING AND CONCLUSIONS OF LAW:

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

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(21) and (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:

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

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

Iowa Admin. Code r. 871-24.26(2) 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:

(2) The claimant left due to unsafe working conditions.

The 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 claimant left work on October 7, 2015 and did not return. He did attempt to contact his supervisor; however, that was

to find out the status of his employment. He did not ever return to the employer's worksite to continue working. The claimant indicated an intention to terminate his relationship and engaged in an overt act when he did not report to work after that time.

When an employee quits due to unsafe working conditions, it is typically deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the same or similar 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). The claimant has established that the railroad ties presented an unsafe working environment. The employer acknowledged it is currently in the process of making the work environment safer. However, the claimant had the option of refusing to work in the stacks with the railroad ties. Had he done so, he acknowledged he would have been assigned to another job. His only reason for not refusing to work in the unsafe conditions was that he liked his job and did not want another one. A reasonable person in the claimant's situation would not have quit his or her employment as there was other, safe work available with the employer. While the claimant's decision to leave his employment 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 must be denied.

DECISION:

The October 30, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs