

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

R NEAL RUGE
Claimant

LINK SNACKS INC
Employer

APPEAL 18A-UI-12451-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/02/18
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – VQ – Voluntary quitting
Iowa Admin. Code r. 871-24.25(37) – VQ – Resignation accepted
Iowa Admin. Code r. 871-24.26(1) – VQ – Contract of hire – change

STATEMENT OF THE CASE:

Neal Ruge, Claimant, filed an appeal from the December 21, 2018 (reference 01) unemployment insurance decision that denied benefits because he voluntarily quit work with Link Snacks, Inc. without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on January 16, 2019 at 3:00 p.m. Claimant participated with his attorney Martin Ozga. Employer did not participate. Claimant's Exhibits A – D were admitted.

ISSUE:

Whether claimant's separation was a voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant was employed full-time as a production worker from September 30, 2008 until his employment with Link Snacks, Inc. ended on October 24, 2018. (Exhibit B, p. 1; Exhibit A, p. 5)

On October 12, 2016, claimant sustained a work-related injury to his neck, right shoulder and right arm. (Exhibit B, p. 1) As a result of the injury, a physician subjected claimant to weight and overtime restrictions. Employer accommodated these restrictions by moving claimant from operations to production "right after the injury." Claimant earned \$14.30 per hour base pay and \$2.50 per hour incentive pay in operations. Claimant believes he averaged four to six hours of overtime per week while working in operations. Claimant earned the same base pay in production, but did not receive incentive pay. While overtime was available in production, claimant was not able to partake in the overtime work, because of his physician's overtime restriction. Claimant does not know his average monthly income prior to his injury. Claimant was not guaranteed incentive pay when he was initially hired; further, while overtime was mandatory when claimant began working for employer, overtime was not guaranteed. Claimant

would have continued working for employer despite the reduction in pay, while looking for other employment.

Claimant voluntarily resigned his employment effective October 24, 2018 per the terms of a settlement agreement in claimant's workers' compensation case against employer. Under the settlement, claimant received payment of \$99,900.00. The reason claimant quit his employment was the settlement agreement. Employer had continuing work available within the restrictions when claimant resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit his employment without good cause attributable to employer. Benefits are denied.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, 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).

Where a claimant gives several different reasons for leaving employment, the administrative law judge is required to consider all stated reasons which might have combined to give the claimant good cause to quit in determining whether any of those reasons constituted good cause attributable to the employer. *Taylor v. IDJS*, 362 N.W.2d 534 (Iowa 1985).

Iowa Admin. Code r. 871-24.25(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation.

While there is no Iowa case law on point, other states have addressed the situation of a voluntary quit in the context of a workers' compensation settlement agreement. In *Edward v. Sentinel Management Co.*, the Minnesota court of appeals concluded that claimant who resigned as a part of a workers' compensation settlement left employment voluntarily without good cause attributable to employer because he had the option of remaining as an employee while pursuing his worker's compensation claim. 611 N.W.2d 366, 367-369 (Minn. App. 2000). In *Larson v. Michigan Employment Security Commission.*, the Michigan court of appeals allowed benefits to a claimant with a job-related injury when the employer was unable to accommodate work restrictions resulting in claimant not working or receiving any compensation; the court concluded that claimant was under economic pressure to sign the workers' compensation settlement and had no tenable alternative. 140 N.W.2d 777, 779-780 (Mich. App. 1966)

The facts of this case are analogous to the facts in *Edward*. Claimant voluntarily quit his employment by signing a workers' compensation settlement agreement, which terms included claimant's voluntary resignation of employment effective October 24, 2018. Claimant's signature on the settlement agreement is both evidence of his intention to terminate his employment relationship with employer and an overt act of carrying out his intention. Claimant had two options: (1) claimant could resign and take the settlement offer or (2) claimant could reject the settlement offer, continue working and continue to pursue his workers' compensation claim. Claimant admitted there was continuing work available to him within his restrictions. Claimant was not under economic pressure such that signing the settlement offer was his only option. To the extent that claimant felt economic pressure from the change in his job and compensation after his injury, claimant admitted that – but for the settlement agreement – he would have continued working for employer while seeking other employment. Furthermore, claimant worked the new job without incentive or overtime pay for approximately two years. Given the time between the job change and claimant's resignation, the economic pressure was not untenable.

Iowa Admin. Code r. 871-24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in the worker's routine on the job would not constitute a change of contract of hire.

A claimant's resignation several months after a substantial change in the contract of hire is disqualifying because the claimant has acquiesced in the changes. *Olson v. Emp't Appeal Bd.*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

Claimant's job and compensation changed after his injury as claimant was no longer able to receive incentive pay and was restricted from working overtime by his physician. Claimant testified that this change occurred "right after the injury." Claimant was injured on October 12, 2016 and resigned on October 24, 2018. Therefore, claimant worked for approximately two years with the change in his job and compensation. After two years, claimant has acquiesced to the changes. Furthermore, claimant testified that this was not the reason for his resignation and

that he would have continued working for employer under these conditions while searching for other employment.

Claimant has failed to meet his burden of proving good cause attributable to his employer. The claimant offered various reasons for ending his employment; and this administrative law judge has considered them all. The claimant's voluntary quitting was not for a good-cause reason attributable to the employer. Benefits are denied.

DECISION:

The December 21, 2018 (reference 01) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs