

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SPENCER B CARR
Claimant

DES MOINES IND COMMUNITY SCH DIST
Employer

APPEAL 22A-UI-04915-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/09/22
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Spencer B Carr, the claimant/appellant filed an appeal from the February 14, 2022 (reference 04) unemployment insurance decision that denied benefits because of a September 1, 2021 voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on March 31, 2022. Mr. Carr participated personally. The employer participated through Rhonda Wagoner, benefits specialist, and LaShone Mosley, director of transportation.

ISSUE:

Did Mr. Carr voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Carr began working for the employer on November 3, 2020. He worked as a part-time school bus driver. His employment ended on September 13, 2021.

The employer required students to wear face masks while riding the school bus due to the COVID-19 pandemic. Some of the students on Mr. Carr's bus would not wear their face masks. Mr. Carr told the students to wear their face masks but they would not. On, or about, August 26, 2021, Mr. Carr parked the bus while students were on the bus and told the students that they should wear their face masks on the bus because COVID-19 can kill. English is not Mr. Carr's primary language and he speaks with an accent.

Unbeknown to Mr. Carr, at least of the one students reported to their parents that Mr. Carr had said he wanted to kill students. At least one parent reported the incident to the employer and reported that they planned to have police at the bus stop the next day. At the end of his work day, Ms. Mosley called Mr. Carr into the office to discuss the matter with him. Ms. Mosely was Mr. Carr's supervisors supervisor. Ms. Mosley told Mr. Carr about the complaint. Mr. Carr was taken aback. Mr. Carr denied that he made any statements about killing students or that he wanted to kill any students. Mr. Carr explained that the students must have misunderstood him, perhaps because of his accent, when he said that COVID-19 can kill. Ms. Mosley pulled the

video recording from the bus. Ms. Mosely and Mr. Carr reviewed the video recording, which showed that Mr. Carr had not said he wanted to kill students but that COVID-19 kills. The employer did not discipline Mr. Carr in any way related to this incident. Mr. Carr was shaken and told Ms. Mosley that he wanted to leave the job students had lied about what he said. Ms. Mosley convinced Mr. Carr to not quit and he did not quit.

The next day Ms. Mosley rode Mr. Carr's bus for his morning and afternoon routes. Ms. Mosley did this because she wanted to be there if any situation arose with parents, police and Mr. Carr. Ms. Mosley worked on her laptop as she rode the bus. Mr. Carr assumed that Ms. Mosley was taking notes about him and his driving. Mr. Carr felt intimidated by Ms. Mosley riding his bus that day.

Separately, Mr. Carr had signed up for an attendance bonus program in which he could receive a \$500.00 bonus if he attended work for 95 percent of the days he was scheduled to work. The only absences counted as excused under the program were for bereavement. Mr. Carr had an emergency family matter come up. Mr. Carr attend work on a Wednesday. That day, Mr. Carr asked his supervisor if he could take off of work to deal with his emergency family matter. The supervisor said yes and Mr. Carr left work after working about one hour that day. Mr. Carr did not attend work the next two days and returned to work the following Monday. These absences meant Mr. Carr has missed more than 95 percent of the days he was scheduled to work. Mr. Carr's supervisor told him that he was not eligible for the \$500.00 bonus. Mr. Carr was upset that he did not get the bonus.

On Monday, September 13, before the employer's offices opened, Mr. Carr left a resignation note and his badge at the employer's door. Employer's Exhibit 1. In the letter, Mr. Carr told the employer that he was resigning because his family was moving. *Id.* Mr. Carr made up the reason he wrote in his resignation letter because he wanted out of the job. Mr. Carr quit because he was frustrated that a student had lied about what he had said and he was concerned about potentially going to jail. Mr. Carr also quit because Ms. Mosley had written his bus and, he assumed, taken notes about him, and he did not get the \$500.00 bonus. Mr. Carr had no disciplinary record while working for the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Carr's separation from employment was without good cause attributable to the employer.

Iowa Code section 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(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. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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 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).

In this case, Mr. Carr quit for several reasons, but none of the reasons support a finding that he left for good-cause reason attributable to the employer according to Iowa law. The administrative law judge understands Mr. Carr's fear of potentially going jail as the allegation against him was serious. However, the employer, after discussing the matter with Mr. Carr and reviewing the video recording, took no action against him and offered him support. Mr. Carr voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The February 14, 2022, (reference 04) unemployment insurance decision is AFFIRMED. Mr. Carr 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.



Daniel Zeno
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April 8, 2022
Decision Dated and Mailed

dz/kmj