

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CHRISTIAN GIEGERICH**  
Claimant

**LSPS INC**  
Employer

**APPEAL 20A-UI-12889-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/03/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 6, 2020, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on December 10, 2020. Claimant participated personally. Employer participated through Owner Craig Smith. Exhibit A and Exhibit 1 were admitted into the record.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or voluntary 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:

The claimant was employed full-time as a co-manager / cabinet designer from October 25, 2019, and was separated from employment on May 1, 2020. The claimant was in the employer's Dyersville shop which serves Cedar Rapids and rural areas. Craig Smith is in Peosta which serves Dubuque customers.

After the Covid19 pandemic began, both Craig Smith and the claimant wanted to be proactive about adapting to the changing economic realities, but they disagreed on the direction the company would go. In the three weeks preceding his resignation, claimant criticized the management of the business. In particular, claimant maintained that staff should not be working overtime because business might be too slow until the construction economy recovered. Craig Smith disagreed and told the claimant the employer should not slow down operations.

On April 24, 2020, the claimant sent an email to Craig Smith listing all of the jobs currently in the shop and declaring the employer had not received any bids. Claimant compared this to weeks in the past when there were on average two to three bids in a week. At the end of the email, the claimant wrote, "As of today, I will be caught up with current jobs / quotes and can take on new tasks. I can also take less hours, go part-time, take a furlough, whatever you need me to do.

We could also get a plan together to go after new builders/clients but with the corona virus [sic] this will be challenging and might actually turn off potential new clients.” (Exhibit A)

In late-April or early-May 2020, claimant walked into the shop in Peosta, Iowa. Craig Smith could tell that the claimant was agitated. The claimant said he did not need the money and expressed his belief that the employer was overstaffed. Craig Smith said he was not going to reduce hours or staff because he was confident the employer’s business would pick up.

On May 7, 2020, claimant verbally resigned at the shop in Peosta, Iowa. The claimant came back and apologized for the meeting that had occurred the previous week. Craig Smith assured him that there were no hard feelings about the criticism he received. The claimant said he was just going to spend some time with his family.

An employee, Tyler Bradley, provided a narrative in support of the employer. (Exhibit 1)

The employers business has now picked up as has the rest of the construction industry in the area. The employer has hired three people since the claimant quit, including other designers.

The claimant applied to an position at Adams Millwork estimator at the end of June 2020. The claimant received an offer in July 1, 2020. The offer was rescinded on July 16, 2020. Adams Millwork’s Owner Chad Lucken called Craig Smith as a job reference for the claimant. During the reference conversation, Craig Smith told Mr. Lucken the claimant was a hard worker, but would eventually refuse direction and insist on his own way of running their business. Mr. Lucken ended the call by stating he would not be hiring the claimant.

The claimant accepted a position at Sunrise Home Improvements in West Palm Beach Florida in October 2020.

The administrative record shows the claimant did not make employer contacts from May 16, 2020 to September 19, 2020.

#### **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 and the claimant was not able and available for work after separating from 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 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.

(22) The claimant left because of a personality conflict with the supervisor.

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).

Initially in the hearing, claimant alleged he was laid off due to lack of work. There certainly appears to have been a lack of work enough to concern the claimant, but that concern was not shared by Craig Smith. Later in the hearing, the claimant acknowledged Craig Smith had been scheduling staff to work overtime much to his chagrin. Craig Smith added the employer continued to hire additional workers. The claimant did not rebut these assertions, but instead clarified that these were misguided decisions given the economic realities. Indeed, Exhibit A shows claimant suggesting a reduction in hours or a furlough to Craig Smith. Instead of being laid off, the claimant and Craig Smith fundamentally disagreed about the direction the employer would go in the wake of the Covid19 pandemic and the accompanying economic downturn which caused the claimant to quit. While claimant's leaving may have been based upon good personal reasons and sound business judgments, it was not for a good-cause reason attributable to the employer according to Iowa law. The next issue to evaluate is whether the claimant was able, available and actively and earnestly seeking work after separating from the employer.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden

of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. *Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

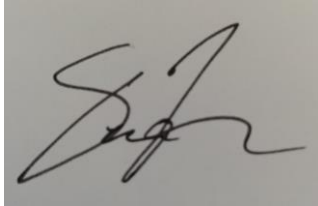
Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) *Available for work.* The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

During the hearing, claimant credibly testified he had applied for two jobs from the time he separated from the employer from May 7, 2020 to December 10, 2020. The administrative record did not show he made additional contacts that were inconsistent with his testimony. In fact, the administrative record shows the claimant made no employer contacts over that period. The construction industry was not impacted enough by the Covid19 pandemic to consider two employer contacts in a seven month period as sufficiently active and earnest of a job search. The claimant was not able and available as of May 7, 2020. Benefits are denied.

**DECISION:**

The October 6, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer and he was not able and available as of May 7, 2020. 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.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

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Sean M. Nelson  
Administrative Law Judge  
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Fax (515) 725-9067

December 31, 2020  
Decision Dated and Mailed

smn/mh