

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AARON D BESSINE
Claimant

BORGHI USA INC
Employer

APPEAL 21A-UI-07206-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/10/21
Claimant: Appellant (5)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On March 10, 2021, Aaron Bessine (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated March 1, 2021 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on April 1, 2020 for personal reasons.

A telephone hearing was held on May 19, 2021. The parties were properly notified of the hearing. The claimant participated personally. Borghi USA Inc. (employer/respondent) participated by HR Manager Lewis Worden.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer full-time as a laborer in warehouse/shipping. Claimant's first day of employment was December 9, 2019. The last day claimant worked on the job was May 1, 2020. Claimant's immediate supervisor was Curtis Bernand. Claimant resigned effective May 6, 2020.

Claimant failed to appear for work or call in to report his absences on May 4, 5, and 6, 2020. Claimant did not appear for work on those dates because he was concerned about COVID-19. However, claimant did not raise any concerns with employer prior to resigning. Neither did claimant inform anyone that he was resigning for the reasons therefore. There was continuing work available for claimant. He did not attempt to return to work after those dates. The employee handbook provides that two consecutive no-call, no-show absences is a voluntary quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated March 1, 2021 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on April 1, 2020 for personal reasons is MODIFIED with no change in effect.

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. 871-24.26 provides in relevant part:

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.
- (3) The claimant left due to unlawful working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

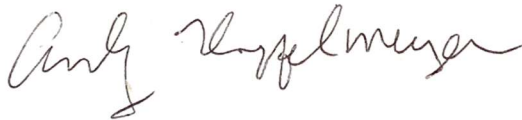
Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried his burden of proving the voluntary leaving was for good cause attributable to employer.

Claimant resigned due to concerns about COVID-19. These concerns are certainly understandable, particularly at that point in the pandemic. However, claimant has not established that working conditions were so unsafe, unlawful, intolerable, or detrimental as to justify resigning, particularly without first raising any issues with employer and allowing it a chance to correct them. Benefits must therefore be denied. The decision is modified solely to reflect that the date of separation was May 6, 2020 rather than April 1, 2020.

DECISION:

The decision dated March 1, 2021 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on April 1, 2020 for personal reasons is MODIFIED with no change in effect. Claimant voluntarily resigned on May 6, 2020 without good cause attributable to employer. Claimant's separation from employment was therefore disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

May 26, 2021
Decision Dated and Mailed

abd/kmj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.