

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK E REIMERS

Claimant

STELLAR INDUSTRIES INC

Employer

APPEAL 21A-UI-25297-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/24/21

Claimant: Appellant (1)

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

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Mark E. Reimers, filed an appeal from the November 10, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits effective December 18, 2021. The parties were properly notified about the hearing. A telephone hearing was held on January 12, 2022. The claimant participated. The employer/respondent, Stellar Industries Inc., did not participate.

The administrative law judge took official notice of the administrative records. Claimant Exhibits 1-3 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment in April 2004 for the employer. He last performed work as a full-time cost-accountant. His last day of work performed was September 23, 2021. Continuing work was not available after that day.

Prior to September 23, 2021, claimant asserted he was the “life” of the employer and the employer had been targeting him for several years, and the pressure mounted with a new hire. Claimant acknowledged he had not been meeting the employer’s performance expectations. Claimant stated he reluctantly agreed to retire at the end of 2021. He anticipated working until December 18, 2021. However, he did not complete the resignation period as planned.

In claimant’s final weeks of employment, he sent communications on at least two occasions to the employer owner, Dave. See Claimant Exhibits B and C). On September 23, 2021, employer

informed claimant that his employment had ended effective September 23, 2021 and he would be paid through September 30, 2021. Separation thereby ensued. (Claimant sent subsequent communications regarding his feelings on September 30, 2020. See Claimant Exhibit A).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge affirms the initial decision: Claimant is allowed benefits for the period of October 24, 2021 (His original claim date) through December 18, 2021. Claimant is denied benefits thereafter.

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 Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Iowa Admin. Code r. 871-24.25(24) 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:

(24) The claimant left employment to accept retirement when such claimant could have continued working.

Iowa Admin. Code r. 871-24.25(38) 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

An employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, (No. ___/___-___, Iowa Ct. App. filed ___, 1986). Cognizant that claimant was upset by changes made in his final year of employment, the administrative law judge concludes the claimant intended to quit the employment on December 18, 2021 for retirement (Claimant Exhibits B/C). Benefits are denied on this basis.

Because the claimant tendered his resignation, but was not allowed to work out the resignation period of December 18, 2021. Because the discharge was in response to a resignation notice, no misconduct is established. Since the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is entitled to benefits from the date of termination September 30, 2021, until the effective date of the proposed resignation, December 18, 2021. Benefits are allowed for this period, provided claimant is otherwise eligible. (Claimant did not establish his claim for unemployment insurance benefits until October 24, 2021).

DECISION:

The November 10, 2021, (reference 01) decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer, but was discharged prior to the resignation effective date. Benefits are allowed until December 18, 2021. Thereafter, benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
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Fax 515-478-3528

February 7, 2022

Decision Dated and Mailed

jlb/kmj

NOTE TO CLAIMANT:

This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

Individuals who do not qualify for regular unemployment insurance benefits, but who were unemployed between February 2, 2020 and June 12, 2021 for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. **The authorization code is 1 , the pin**

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>