

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RANDALL MORIARTY
Claimant

VUGTEVEEN LAWN SERVICE INC
Employer

APPEAL 21A-UI-03463-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/11/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code section 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On January 19, 2021, the claimant filed an appeal from the December 23, 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 March 24, 2021. The claimant participated and testified. The employer participated through Owner Kevin Vaugteveen, Head Landscaper Paul Parsons and Office Manager / Human Resources Director Nancy Eckard. Exhibits A, D-1 and D-2 were admitted into the record.

ISSUE:

1. Whether the claimant's appeal is timely? If there are reasonable grounds to consider it timely?
2. 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 landscaper from September 3, 2019, until he was separated from employment on September 14, 2020, when he quit. The claimant's immediate supervisor was Head Landscaper Paul Parsons.

Office Manager Nancy Eckard asked the claimant if he was "still working here" twice a week.

In September or October of 2019, one of the claimant's coworkers drew a large picture of male genitals in the dirt accumulated on his truck's windshield. Staff gathered around the claimant's truck and laughed at him. They also exclaimed, "Never mind... you like those kinds of pictures."

After the onset of the Covid19 pandemic, the claimant was told that he would have to wipe down his truck regularly. The claimant was not aware of anyone being asked to wipe down their truck. Eventually, the claimant felt so "inferior" from being told to wipe down his truck that he obtained

a Covid19 test. After informing the staff that he had been tested for Covid19, staff no longer told him to wipe down his truck. None of the staff asked to see the claimant's test results.

One day, the claimant and Head Landscaper Paul Parsons were driving down the road. Mr. Parson's asked the claimant out of the blue if he was going to inherit a bunch of money when his mother died. The claimant thought Mr. Parsons' question was pretty "cold hearted." Mr. Parsons explained that it is a common question to ask people in the Spirit Lake, Iowa area if they will inherit their parent's beach house.

In the middle of August 2020, the claimant complained to Owner Kevin Vaugteveen. Mr. Vaugteveen replied the things he was complaining about were just "guy talk" and were part of the industry.

On September 11, 2020, the claimant asked Mr. Parsons what he should do with a load of rocks in a dump truck. The claimant said that the truck was positioned in a place where they needed to go. The claimant believed this was done intentionally to create work for him. This was the final straw, the claimant resigned effectively immediately later that day. The claimant believed each of the above uncomfortable incidents was calculated to force him to leave, so the employer would not have to lay off other staff.

The claimant did not receive the Iowa Workforce Development decision dated December 23, 2020, reference 01. The decision said it would be final if an appeal was not filed prior to January 2, 2021. (Exhibit D-1) The claimant did not receive the decision until January 19, 2021. On that day, the claimant called the Appeals Department of Iowa Workforce Development who advised him to file an appeal in writing. The claimant filed a handwritten appeal later that day. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was not timely filed, but has reasonable grounds to be considered timely.

Iowa Code section 96.6(2) provides, in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed the appeal the same day after receiving it. Therefore, the appeal shall be accepted as timely.

The administrative law judge further concludes the claimant quit 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 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.

Iowa Admin. Code r. 871-24.26(4) 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:

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

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

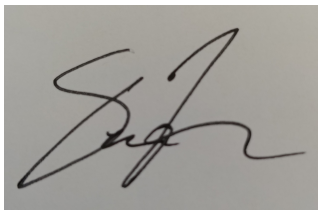
Employee who receives reasonable expectation of assistance from employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. *Polley v. Gopher Bearing Company*, 478 N.W.2d 775 (Minn. App. 1991).

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).

The administrative law judge does not agree with the claimant that a reasonable person would have left due to the incidents described during the hearing. The behavior was unprofessional and inappropriate, but it was not nearly serious to be appropriately called intolerable. Instead, the behavior appears to have been pranks played on the claimant. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The December 23, 2020, reference 01 unemployment insurance decision is affirmed. The claimant 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.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown within a rectangular frame.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515) 725-9067

March 31, 2021
Decision Dated and Mailed

smn/kmj