

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KERMIT B ASKLAND
Claimant

TRUSTILE DOORS LLC
Employer

APPEAL 21A-UI-18968-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/20/21
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On August 25, 2021, Trustile Doors LLC (employer/respondent) filed an appeal from the August 19, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was discharged on April 22, 2021 without a showing of misconduct.

A telephone hearing was held on October 19, 2021. The parties were properly notified of the hearing. Employer participated by HR Manager Pam Lampman. Kermit Askland (claimant/respondent) participated personally. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?
- III. Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

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

Claimant worked for employer as a full-time production worker. Claimant's first day of employment was July 2, 2018. The last day claimant worked on the job was April 5, 2021. Claimant's schedule was Monday through Thursday, 6 a.m. to 4:30 p.m., with occasional overtime. Claimant separated from employment on April 22, 2021. Claimant abandoned his employment at that time.

Claimant requested and was granted a medical leave of absence beginning April 6, 2021 and continuing through April 16, 2021. Claimant's doctor was holding him out of work during this time due to anxiety connected with employer's requirement that employees wear masks while working. Claimant's doctor released him to return to work on Monday, April 19, 2021 with orders that he be allowed to wear a face shield rather than a mask while working.

Lampman called claimant on April 16, 2021 to confirm his intention to return to work on April 19, 2021. Employer was prepared to honor claimant's doctor's recommendation that he wear a face shield rather than a mask. However, claimant did not respond to the call or to subsequent communications from employer. He also did not report for work on April 19, 20, or 21 as scheduled. He did not appear because he was still feeling medically unable to report to work. There is conflicting testimony as to whether claimant properly reported his absences by calling into employer's 1-800 number and leaving a message on those days.

Claimant made no effort after April 21 to report for work, call in absent, contact his doctor for additional treatment, or contact Lampman about his ability to work. He instead simply assumed that he would be discharged for his absences. Employer did not communicate to claimant that he was discharged for this reason. Claimant made no effort to return to employer later and instead sought work elsewhere.

Employer participated in a fact-finding interview and provided at that time essentially the same information as is set forth above.

The unemployment insurance system shows claimant received weekly unemployment insurance benefits in the amount of \$493.00 for a total of six weeks, from the benefit week ending June 26, 2021 and continuing through the benefit week ending July 31, 2021. The total amount of unemployment insurance benefits paid to date is \$2,958.00. The unemployment insurance system shows claimant has not received Federal Pandemic Unemployment Compensation (FPUC).

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the August 19, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was discharged on April 22, 2021 without a showing of misconduct is REVERSED.

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

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. 871-24.25 provides in relevant part:

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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

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:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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. Benefits must therefore be denied.

Even assuming claimant did properly report his initial absences on April 19, 20, and 21, 2021, he made no effort to return to work or report his absences after that date and in so doing abandoned his job. He instead simply assumed he was or would be discharged and sought work elsewhere. Furthermore, and to the extent the medical issue keeping claimant from work was work-related, employer took reasonable steps to accommodate claimant by honoring his doctor's orders. In contrast, claimant made no effort to notify employer that this accommodation was insufficient or that he would be forced to resign if further accommodation was not made. In failing to do so, claimant deprived employer of a chance to address what other work-related issues may have resulted in his quitting. Under these circumstances, the administrative law just must find claimant voluntarily quit work without good cause attributable to employer.

- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The unemployment insurance system shows claimant received weekly unemployment insurance benefits in the amount of \$493.00 for a total of six weeks, from the benefit week ending June 26, 2021 and continuing through the benefit week ending July 31, 2021. The total amount of unemployment insurance benefits paid to date is \$2,958.00. Because the administrative law judge now finds claimant disqualified from benefits, he has been overpaid in that amount.

Because employer did participate in the fact-finding interview within the meaning of Iowa Admin. Code r. 871-24.10 and the overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment, benefits shall be recovered from claimant.

The unemployment insurance system shows claimant has not received Federal Pandemic Unemployment Compensation (FPUC). He therefore has not been overpaid FPUC.

DECISION:

The August 19, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was discharged on April 22, 2021 without a showing of misconduct is REVERSED. The separation from employment was disqualifying. Benefits are therefore denied from the date of separation and continuing until claimant earns wages for insured work equal to ten times the weekly benefit amount.

Claimant has been overpaid benefits in the amount of \$2,958.00. Benefits shall be recovered. The charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment. Claimant has not been overpaid FPUC.



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

October 27, 2021
Decision Dated and Mailed

abd/ol

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>.