

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

JOSHUA J HUNTOON
Claimant

APPEAL NO. 18A-UCX-00008-TN

**ADMINISTRATIVE LAW JUDGE
DECISION**

LYCOS INC
Employer

OC: 02/11/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Joshua Huntoon, the claimant, filed an appeal from a representative's unemployment insurance decision dated October 30, 2018, reference 01, which denied unemployment insurance benefits, finding the claimant voluntarily quit work on September 28, 2018, without good cause attributable to the employer. After due notice was provided, an in-person hearing was held in Council Bluffs, Iowa on December 20, 2018. Claimant participated. The employer participated by Mr. John Taylor, company president.

ISSUES:

The first issue is whether the claimant filed a timely appeal. The second issue is whether the claimant left employment with good cause that was attributable to the employer.

FINDINGS OF FACT:

A disqualification decision was mailed to the Joshua Huntoon's last known address of record on October 30, 2018. Mr. Huntoon utilizes his parent's address to receive his mail and generally checks his mail approximately once per week. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by November 9, 2018. The appeal was not filed until November 15, 2018, which is after the date noticed on the disqualification decision.

Mr. Huntoon suffers from post brain injury syndrome as a result of recent military service. The claimant's intent was to file a timely appeal. However, due to his injury, Mr. Huntoon is unable to specify with certainty the exact date or circumstances when he received the initial decision. Mr. Huntoon asserts that he intended to file a timely appeal. In consideration of the above stated circumstances, the administrative law judge concludes the appeal should be considered timely.

FINDINGS OF FACT REGARDING THE JOB SEPARATION:

The administrative law judge, having considered all the evidence in the record, finds: Joshua Huntoon was employed by Lycos, Inc. from March 19, 2018 until September 30, 2018, when he voluntarily quit employment. Mr. Huntoon was employed as a full-time carpenter and was paid \$18.50 per hour. His immediate supervisor was Mr. Jim Hull.

When Mr. Huntoon made application for employment with Lycos, Inc., he requested a wage of \$20.00 per hour. Lycos, Inc. offered the claimant \$18.00 per hour. The parties agreed on \$18.50 per hour, after some negotiation. During the negotiations, Mr. Huntoon was told of the possibility of receiving an increase in pay in the future if the employer believed his performance and attendance justified a pay increase. Mr. Huntoon believed the company would review the performance of its workers after six months, although the normal company policy provided for an evaluation once per year.

In September of 2018, Mr. Huntoon believed sufficient time had passed and believed he should receive a pay increase. On September 20, 2018, he sent an email asking if his work would be evaluated and if his pay would be increased. Because one year of employment had not elapsed, the company human resource department contacted Mr. Huntoon's most recent project manager about whether a pay increase for Mr. Huntoon was justified. Based upon the response from the project manager, a decision was made not to increase Mr. Huntoon's pay at that time due to concerns about his performance and attendance. Although he was dissatisfied with the company's response, Mr. Huntoon, at that time, continued in his employment with the company.

On Friday, September 28, 2018, Mr. Huntoon was informed that he was being assigned to a different work project located in Lincoln, Nebraska. Mr. Huntoon had previously expressed dissatisfaction with the company's policy of not paying employees mileage or travel time for jobs 60 miles or less from the company's headquarters. Mr. Huntoon told the Lincoln project manager that he would be unable to meet him and ride with him to the Lincoln project at the time the project manager set for leaving on Monday morning, September 30, 2018. Mr. Huntoon left his work tools at the project where he was most recently assigned. Tools were locked up and unavailable until employees arrived at that job site each day.

Mr. Huntoon was informed that he could gather his tools when they were available and then drive his own vehicle to the Lincoln work site. Mr. Huntoon initially seemed agreeable, but, when he did not report for work within a reasonable time on Monday, September 30, 2018, the project manager took the extra step of trying to contact him to see if he intended to report for work. Later that morning, Mr. Huntoon submitted his resignation to the company.

Mr. Huntoon believed that the promise of a pay increase made at the time of hire was not fulfilled. The claimant was dissatisfied with his hourly pay and also dissatisfied with the company policy regarding travel compensation to hourly workers. Although Mr. Huntoon and other workers were aware the company utilized an open door policy that allows workers to go up the chain of command if they are dissatisfied with decisions made by the company, Mr. Huntoon did not contact Mr. Taylor or other management individuals prior to leaving.

REASONING AND CONCLUSIONS OF LAW:

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(13) 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

Iowa Admin. Code r. 871-24.25(30) 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:

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

When a person voluntarily quits employment due to dissatisfaction with the work environment, distance to work, or the pay that has previously agreed upon, it is presumed that the quit is without good cause attributable to the employer. See 871 IAC 24.25(1)(30).

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).

In the case at hand, the evidence establishes that the claimant was not guaranteed a pay increase at any specific time, but told that any pay increases were contingent upon a later review of his performance and attendance. Although the claimant requested an increase in pay and a review of his performance after he was employed for six months instead of one year, the employer complied and formally evaluated his performance with the project manager where he was currently working. The pay increase was denied. The claimant did not complain up the chain of command, but continued in the employment at that time.

The claimant was also dissatisfied because the company did not pay carpenters for their travel time or reimburse them for travel expenses if they drove their personal cars and the distance was 60 miles or less from the company's headquarters. This had not changed. When the claimant was informed that he was moved to a different project in Lincoln, Nebraska, he decided to quit employment. The project manager offered the claimant a reasonable accommodation by allowing him to report to work late after he had obtained his work tools. However, the claimant made a decision to quit this employment.

The claimant's reasons for quitting were undoubtedly good-cause reasons from his personal viewpoint. For the above stated reasons, the administrative law judge concludes that his reasons were not good-cause reasons attributable to the employer. Accordingly, the claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's unemployment insurance decision dated October 30, 2018, reference 01, is affirmed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs