

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KIWAN M BOLAR**  
Claimant

**APPEAL 21A-UI-06899-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**D OF C FOODS INC**  
Employer

**OC: 05/10/20**  
**Claimant: Respondent (2R)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
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 March 4, 2021, D of C Foods Inc. (employer/respondent) filed an appeal from the February 23, 2021 (reference 02) unemployment insurance decision that allowed benefits based on a finding that claimant quit work on October 9, 2020 because of a change in the contract of hire.

A telephone hearing was held on May 17, 2021. The parties were properly notified of the hearing. Employer participated by GM Mac Burris. Kiwan Bolar (claimant/respondent) participated personally. His mother was present and observed the hearing.

Employer's exhibits 1 and 2 were admitted. 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?

**FINDINGS OF FACT:**

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

Claimant worked for employer as a part-time crew member. Claimant's first day of employment was July 3, 2019. The last day claimant worked on the job was October 9, 2020. Claimant's immediate supervisors were Burris and Department Manager Harrison Fink. Claimant resigned on October 9, 2020.

Claimant resigned because he was upset with how employer was scheduling him. Claimant had in the several months prior being scheduled for fewer shifts than he had in the past. This was due to claimant's attendance issues. However, he had been scheduled five of the previous

seven days leading up to his resignation. Claimant was never guaranteed certain hours in his position. Claimant did not secure a job elsewhere prior to resigning. He has not attempted to return to work for employer, even though employer advised him he could return to work if he wished to.

The unemployment insurance system shows claimant has not received regular unemployment insurance benefits since the date of discharge. He has received Pandemic Emergency Unemployment Compensation (PEUC) since that time. The administrative law judge further notes that claimant has received regular unemployment insurance benefits from the benefit week ending May 16, 2020 through the benefit week ending September 19, 2020. Claimant did not report wages earned in any of those weeks except for the week ending June 13, 2020. The administrative record shows claimant was earning wages from employer during this period.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the February 23, 2021 (reference 02) unemployment insurance decision that allowed benefits based on a finding that claimant quit work on October 9, 2020 because of a change in the contract of hire is REVERSED.

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

Iowa Code section 96.5(1)a 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:

- (18)** The claimant left because of a dislike of the shift worked.
- (21)** The claimant left because of dissatisfaction with the work environment.
- (28)** The claimant left after being reprimanded.

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:

**(1)** A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

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 are therefore denied.

Claimant resigned because he was upset with how employer was scheduling him. Claimant had in the several months prior being scheduled for fewer shifts than he had in the past. This was due to claimant's attendance issues. This reason is akin to resigning because of a dislike of the shift worked, a dissatisfaction with the work environment, or in response to being reprimanded. These reasons are presumed to be without good cause attributable to employer and the administrative law judge finds they were without good cause here. Notably, to the extent claimant was upset with a reduction in hours, employer had scheduled claimant to work in five of the seven days leading up to the resignation. The reduction in hours did not constitute a change in the contract of hire, as claimant was never guaranteed certain hours in his position.

Because claimant did not receive regular unemployment insurance benefits after the date of separation, he has not been overpaid benefits based on the disqualification. However, this

matter must be remanded to the department to determine whether claimant has been overpaid regular unemployment insurance benefits based on a failure to report wages and/or has been overpaid PEUC.

**DECISION:**

The February 23, 2021 (reference 02) unemployment insurance decision that allowed benefits based on a finding that claimant quit work on October 9, 2020 because of a change in the contract of hire is REVERSED. Claimant's resignation was without good cause attributable to employer. Claimant is therefore disqualified from benefits from the date of separation and continuing until he earns wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible at that time.

**REMAND:**

The issue of whether claimant has been overpaid regular unemployment insurance benefits based on a failure to report wages and/or has been overpaid PEUC is REMANDED to the department for an investigation and determination.



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

May 25, 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>.