

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAWN A SHILL

Claimant

ADVANCE STORES COMPANY INC

Employer

APPEAL 18A-UI-10007-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/14/18

Claimant: Appellant (2R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 25, 2018 (reference 02) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on October 15, 2018. The claimant participated personally. The employer, Advance Stores Company Inc., participated through witness Chad Liska.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

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

Claimant was employed part-time as a counter salesman and delivery driver. His work schedule varied but he was working more than twenty hours per week until June of 2018, when he had back surgery. He began working for this employer on January 20, 2018 and his last day physically worked on the job was July 16, 2018. His immediate supervisor was Mr. Liska.

In June of 2018, claimant had back surgery for a non-work related injury. He came back to work at the beginning of July of 2018 and had a 5-10 pound lifting restriction. This was a permanent lifting restriction. Claimant worked a few days at the beginning of July of 2018 and then he was no longer scheduled to work.

On August 20, 2018, Mr. Liska sent a text message to the claimant telling him he was put on the schedule to work on August 28, 2018 and on August 30, 2018 at 7:30 a.m. The claimant did not receive Mr. Liska's text message. He did not come to work on August 28, 2018. Mr. Liska texted the claimant again on August 28, 2018 asking about why he was not at work and the claimant did not receive this text message. Claimant had filed an additional claim for

unemployment insurance benefits effective August 19, 2018. Claimant had no prior discipline during the course of his employment.

There has been no initial investigation and determination regarding whether the claimant is able to work due to injury after his back surgery. The question of whether the claimant is able to work effective his additional claim date of August 19, 2018 will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial fact-finding interview, investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code §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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). To be disqualified based on the nature of the separation, the claimant must either have been discharged for misconduct or have quit, but not for good cause attributable to the employer. The employer bears the burden of proving disqualification of the claimant. Iowa Code 96.6(2). Where a claimant has quit, however, the claimant has the burden of proving that a voluntary quit was for good cause attributable to the employer pursuant to Iowa Code section 96.5(1). Since the employer has the burden of proving disqualification, and the claimant only has the burden of proving the justification for a quit, the employer also has the burden of providing that a particular separation was a quit. The Iowa Supreme Court has stated explicitly, "the employer has the burden of proving that a claimant's departure from employment was voluntary." *Irving v. Employment Appeal Board*, 883, NW 2d 179, 210 (Iowa 2016).

In this case, the claimant never received Mr. Liska's text message that he was put back on the work schedule and needed to report for work. Claimant did not intend to voluntarily quit and the employer did not intend to discharge the claimant from employment. This mutual mistake caused the claimant's separation from employment. The employer has failed to establish that the claimant voluntarily quit his employment as is required under Iowa Code § 96.6(2) to establish disqualification. As such, the separation from employment is not disqualifying.

DECISION:

The September 25, 2018 (reference 02) decision is reversed. The claimant was not separated from employment in a manner that would disqualify him from unemployment insurance benefits. The claimant is allowed benefits, provided he is otherwise eligible.

REMAND: The issue of whether the claimant is able to work effective August 19, 2018 as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs