

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHRIS MARSHALL
Claimant

APPEAL NO. 18A-UI-07209-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALPHA MEDIA LLC
Employer

OC: 06/03/18
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Chris Marshall filed a timely appeal from the June 25, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Marshall voluntarily quit on April 23, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on August 3, 2018. Mr. Marshall participated. Ron McCarthy represented the employer. Exhibit B was received into evidence.

ISSUE:

Whether Mr. Marshall separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Chris Marshall was employed by Alpha Media, L.L.C. d/b/a KGRN AM radio station in Grinnell, as the full-time News Director until April 17, 2018, when he voluntarily quit for personal reasons. Mr. Marshall began his employment in 2006. Tim Dill, Operations Manager, was Mr. Marshall's immediate supervisor. Ron McCarthy is General Manager. On April 17, 2018, Mr. Marshall was scheduled to report for work at 11:00 a.m. At 11:31 a.m., Mr. Marshall sent a text message to Mr. McCarthy. Mr. Marshall stated, "I won't be in today. I realize this is strike three. I can't do this anymore." On the evening before, Mr. Marshall had relapsed in his alcoholism recovery. Mr. McCarthy concluded from the text message that Mr. Marshall was giving notice of a decision to quit the employment. At 2:16 p.m. the same day, Mr. McCarthy responded to Mr. Marshall's text message with a text message, "Please let me know if you have any personal items to pick up." Mr. McCarthy's text message did not discharge Mr. Marshall from the employment. Later in the day, Mr. McCarthy attempted to reach Mr. Marshall by telephone. The two men spoke by telephone the next day. At that time, Mr. McCarthy expressed concern for Mr. Marshall and asked Mr. Marshall about his plans. Mr. Marshall stated that he did not know, that he was going to reflect, and that he was relieved not to have to come to work anymore. Mr. Marshall asked about accrued vacation pay. Mr. McCarthy agreed to pay Mr. Marshall through the end of the month to compensate him for accrued vacation time. On April 23, 2018, Mr. Marshall went to

the workplace to collect his personal effects. While there, Mr. Marshall left a resignation memo on the desk of each of his colleagues. In the resignation memo, Mr. Marshall stated that he was obliged to leave for personal reasons, that he appreciated the time he spent with his colleagues, that he was sorry to leave without notice, and that he was sorry for the inconvenience, and that he had the highest respect of each of his colleagues.

On May 3, 2018, Mr. Marshall contacted Mr. McCarthy and requested to meet with him. The two men met away from the workplace that day. At that meeting, Mr. Marshall requested to return to the employment for several months at which time he planned to retire. Mr. Marshall had at that point been away from the employment for 12 work days. Mr. McCarthy asked Mr. Marshall to put his request in writing and agreed to forward the request to the employer's corporate office. On May 4, Mr. Marshall provided his written request to Mr. McCarthy and Mr. McCarthy forwarded the request to the corporate human resources director in Portland, Oregon. On May 16, 2018, the human resources director decided not to reinstate Mr. Marshall to the employment. On May 18, 2018, Mr. McCarthy conveyed that decision to Mr. Marshall.

Before Mr. Marshall's text message on April 17, 2018, there had been multiple attendance issues ostensibly related to Mr. Marshall's consumption of alcohol and impairment. On April 9, 2018, Mr. Marshall was absent from work and gave notice 90 minutes after the scheduled start of his shift. On April 10, Mr. McCarthy and Mr. Dill met with Mr. Marshall regarding the incident. Mr. McCarthy spoke to Mr. Marshall regarding the burden that absences with late notice placed on coworkers. Mr. McCarthy referenced his prior leniency with Mr. Marshall and his concern of an appearance a double standard that treated Mr. Marshall more leniently than other employees. Mr. McCarthy referenced an absence in the fall of 2017 wherein Mr. Marshall alleged that he had misplaced his house key and another instance wherein Mr. Marshall skipped a new assignment due to alcohol impairment. Mr. McCarthy had Mr. Marshall sign a warning letter that indicated another similar incident could result in suspension or loss of employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)f 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. But the individual shall not be disqualified if the department finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson*

Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded 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).

The weight of the evidence in the record establishes that the employer reasonably concluded from Mr. Marshall's April 17, 2018 text message that Mr. Marshall was voluntarily quitting the employment. That conclusion was reinforced by the telephone conversation on April 18 and the resignation memo to colleagues on April 23. Mr. Marshall's personal issues providing compelling reasons for leaving the employment, but even more compelling reasons to remain in the employment. Mr. Marshall was away from the employment for 12 work days prior to contacting the employer and requesting to return to the employment. The employer was under no obligation to reinstate Mr. Marshall after his voluntary separation from the employment and extended absence from the employment. Mr. Marshall's belated equivocation on whether he voluntarily separated from the employment does not alter the voluntary quit that preceded that equivocation.

Based on the evidence in the record and application of the appropriate law concludes that Mr. Marshall voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Marshall is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Marshall must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The June 25, 2018, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective April 17, 2018. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs