

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THADEUS J NACE
Claimant

MANN'S OTTUMWA LLC
Employer

APPEAL 18A-UI-06009-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/29/18
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the May 24, 2018, (reference 01), unemployment insurance decision that allowed benefits based upon a discharge from employment. After due notice was issued, a telephone conference hearing was held on June 18, 2018. Claimant did not respond to the hearing notice instruction by registering for the hearing and did not participate. Employer participated through general manager Shari Bedford.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time McDonald's crew member until the separation date on March 6, 2018. A couple of weeks prior to the separation he told the shift manager Brittany to "fuck off." He was suspended pending appointment to speak with Bedford. He never made that appointment so the employer considered him to have quit. Continued work would have been available had he not quit as he would have been disciplined but not discharged. Brittany and district manager Jolynn do not have authority to fire employees.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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 pertinent 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:

(6) The claimant left as a result of an inability to work with other employees.

(22) The claimant left because of a personality conflict with the supervisor.

(28) The claimant left after being reprimanded.

While the employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. Since claimant did not follow up with Bedford as directed, and his assumption of having been fired was erroneous, his failure to arrange an appointment or communicate with her was an abandonment of the job. Claimant is not monetarily eligible for a part-time quit resolution pursuant to Iowa Admin. Code r. 871-24.27.

Even had he been discharged, he would still be disqualified for the use of verbally abusive language towards his supervisor. See, *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990) ("The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made.")

DECISION:

The May 24, 2018, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Claimant did not claim and was not paid any weeks of unemployment insurance benefits since filing the claim effective April 29, 2018. Since no benefits were claimed or paid, no overpayment is established.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs