

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GERALD A UNDERBERG
Claimant

ELANCO US INC
Employer

APPEAL 21A-UI-23600-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/19/21
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Gerald A Underberg, the claimant/appellant filed an appeal from the October 19, 2021 (reference 01) unemployment insurance decision that denied benefits based on an August 2, 2021 voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on December 14, 2021. Mr. Underberg participated and testified. The employer did not participate in the hearing.

ISSUE:

Did Mr. Underberg voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Underberg began working for the employer on December 4, 2006. He worked as a full-time grade 4 maintenance worker. He worked eight hour shifts Wednesday through Sunday.

In late May 2021, Mr. Underberg told the employer that he had signed up for Medicare based on his age. About one month later, the employer told Mr. Underberg that he would no longer be working maintenance, and he would no longer be working his Wednesday through Sunday, eight hour shift schedule. The employer moved Mr. Underberg to a packing job working ten hour shifts Monday through Thursday. In that job, Mr. Underberg was required to pack products into books at a high rate of speed. The employer told Mr. Underberg that he was being moved from maintenance to packing because a customer had doubled their order and the employer needed more employees working in the packing position. The employer also moved another employee to the packing position at the same time it moved Mr. Underberg. Mr. Underberg asked the employer if he could keep his maintenance job and not move to the packing job. The employer told him no.

Soon after beginning the packing job, Mr. Underberg told the employer that he could not do that job due to his age and physical ability. Mr. Underberg also asked his old manager in the

maintenance department and someone from the human resources office if he could move back to his old job. They both told him no. The employer gave Mr. Underberg a verbal warning for not meeting the employer's work expectations in the packing job. The employer told Mr. Underberg that his daily average was poor. Mr. Underberg had had no prior discipline record.

On July 19, Mr. Underberg gave the employer a two-week notice of intention to resign. Mr. Underberg testified that he could have continued, and wanted to continue, to do the maintenance job if the employer had not moved him to the packing job. Mr. Underberg's employment ended on August 2.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Underberg's separation from employment was with good cause attributable to the employer.

Iowa Code section 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.

Iowa Admin. Code r. 871-24.25 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

Iowa Admin. Code r. 871-24.26(1) provides:

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.

The 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). 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).

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447–78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871—24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871—24.26(4), the intolerable working conditions provision. The Iowa Supreme Court recently concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871—24.26(6)(b) but not 871—24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Although Mr. Underberg did not suffer a reduction in hours, he did suffer substantially different working hours and different demands in his job than he was led to believe at the time of hire. The employer changed the days Mr. Underberg worked from Wednesday through Sunday to Monday through Thursday, the length of his shifts from eight hours to ten hours, and the demands of his job. Mr. Underberg suffered a substantial change in the contract of hire, and his resignation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The October 19, 2021, (reference 01) unemployment insurance decision is reversed. Mr. Underberg voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.



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January 19, 2022

Decision Dated and Mailed

dz/abd