

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JERRY L STRATTON
Claimant

ALLIED CONSTRUCTION SERVICES
Employer

APPEAL 20A-UI-08563-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On July 27, 2020, the claimant filed an appeal from the July 17, 2020, (reference 01) unemployment insurance decision that denied benefits based on voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on September 1, 2020. Claimant participated and called his brother, Gary Stratton to testify. Employer participated through Nile Isaac.

ISSUES:

Did claimant voluntarily quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on November 5, 2019. Claimant last worked as a full-time union carpenter April 24, 2020. Claimant was discharged on April 29, 2020 and turned in his tools on April 30, 2020.

On April 24, 2020 claimant was working on a job in West Des Moines along with his brother Gary Stratton. On April 24, 2020 claimant and his brother were told by Mr. Isaac to report to the site that was being built for Amazon in Bondurant, Iowa. Claimant and his brother believed that he would have to work six ten-hour days while working at the Amazon work site. The Amazon work site had approximately 500 – 600 workers on the job site. The work site in Wes Des Moines had about 150 workers. Claimant is 60-years old and testified that he was concerned about Covid-19 exposure at the amazon site. Gary Stratton provided transportation for claimant to work. Gary Stratton testified that he would be willing to work, and testified that they would have been willing to work up to 48 hours a week, but 60 hours a week was too much. All the witnesses who testified agreed that under the union contract the claimant could only be required to work more than 40 hours and anything in excess of 40-hours would be voluntary.

Mr. Isaac testified the employer had a verbal No Call/No Show policy that assumed three days No Call/No Show is a quit. He testified to a number of days claimant failed to call in. Only April 27 – 29, 2020 were consecutive days. Claimant testified he called in during those days.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The employer testified he had a verbal policy that three days of No Call/No Show was considered a voluntary quit. The employer listed a number of days that he asserted the claimant did not call. Most of the times were not consecutive days. Mr. Isaac stated that claimant did not call in April 27, 28 and 29, 2020. Claimant testified he called in. I do not find there is sufficient evidence to conclude claimant was a No Call/No Show for three consecutive days and can be deemed to have voluntarily quit under Iowa Admin. Code r. 871-24.25(4).

Iowa Admin. Code r. 871-24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

I find that claimant refused to perform assigned work. The parties all agreed that as a member of the union claimant could not have been made to work more than 40-hours. Claimant was willing to work up to 48-hours at the Amazon site. As claimant was willing to work at that site and could not be made to work overtime I do not find that his concern about Covid-19 provides good cause attributable to the employer. The claimant was willing to work at the site, not just extra hours. The employer could not make him work extra hours. While it is true the claimant did not say that he quit, under Iowa Admin. Code r. 871-24.25(27) his refusal to performed assigned work is deemed a voluntary quit.

I find claimant quit his employment without good cause attributable to the employer.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The July 17, 2020, (reference 01) unemployment insurance decision is affirmed. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided claimant is otherwise eligible.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though claimant is not eligible for regular unemployment insurance benefits under state law, claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. This decision does not address when claimant is eligible for PUA. For a decision on such eligibility, claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>
<https://www.iowaworkforcedevelopment.gov/Pua-application>



James F. Elliott
Administrative Law Judge

September 4, 2020
Decision Dated and Mailed

je/sam