

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT J WUBBEN
Claimant

OZARK AUTOMOTIVE DISTRIBUTORS INC
Employer

APPEAL 20A-UI-15138-DB-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 08/30/20
Claimant: Appellant (5)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 9, 2020 (reference 01) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer. Due notice was issued and the parties were properly notified of the hearing. A telephone hearing was held on January 21, 2020. The claimant, Robert J. Wubben, participated personally. The employer, Ozark Automotive Distributors Inc., participated through witness Julie Akers. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as full-time Class A truck driver. He began working for the employer on December 16, 2019 and he voluntarily quit on August 24, 2020. He was hired as a floater driver.

Claimant's job duties included hauling loads to various states. Being a floater driver meant that he would be assigned loads that other drivers could not be able to take because they were absent from work. He did not necessary have a regular schedule for his hours; however, he typically started a load between 9:00 pm – 11:00 p.m. and would return the following day. His shifts were up to 12 hours long and he worked up to 60 hours per week. He was required to have 10 hours of rest time between shifts.

By August of 2020, the claimant was experiencing extreme fatigue from working 60 hours per week. Even though he was allowed 10 hours of rest time between shifts, he was stressed, fatigued and unable to stay awake without caffeine. By the time his shift was over, he was unable to sleep because of the amount of caffeine he was drinking in order to perform his job duties. This would lead to him getting insufficient rest during his down time. He did not speak

to his employer about the extreme fatigue that he was enduring or request a reasonable accommodation.

On some occasions he would have to wait multiple hours for the warehouse workers to finish loading the cargo on the trailer. When the warehouse workers were slow, this extended the hours that he was required to work. Claimant was also assigned to routes he was not familiar with, causing delays in drive time. Many times a route that would normally take 10 hours took additional hours due to these delays. This caused the claimant to work more hours than he expected due to these various inefficiencies. Claimant did not seek medical attention about his medical issues. He tendered his verbal resignation to Lynn Coe over the telephone on Monday, August 24, 2020.

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).

Claimant had an intention to quit and carried out that intention by tendering his verbal resignation. As such, 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). Claimant contends that he voluntarily quit due to intolerable or detrimental working conditions.

Iowa Admin. Code r. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

As such, if claimant establishes that he left due to intolerable or detrimental working conditions, benefits would be allowed. Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of

intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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. Our supreme court concluded that, because the intent-to-quit requirement was added to 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. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

“Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)(“[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith”); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer “free from fault”); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)(“The good cause attributable to the employer need not be based upon a fault or wrong of such employer.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, claimant was not required to give the employer any notice with regard to the alleged intolerable or detrimental working conditions prior to him quitting. However, claimant must prove that his working conditions were intolerable or detrimental.

Given the facts of this case, claimant’s long work hours and job assignments sending him to routes he was unfamiliar with were duties of the job that he accepted upon hire. Claimant was aware that regulations allowed him to work up to 60 hours per week and that he was a floater driver who could be assigned to any route.

While it is clear that the claimant was suffering from stress and fatigue due to his job duties; these were not job duties that were different from his original contract of hire. Further, claimant failed to seek medical attention or seek any reasonable accommodation to change his schedule or work a different route. The inability of co-workers to promptly load cargo causing the claimant to be delayed as well as the claimant being assigned to routes he was unfamiliar with are circumstances in which a reasonable person would not feel compelled to resign. See *O’Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). Rather, the circumstances in this case seem to align with the conclusion that claimant was dissatisfied with his work environment in general. This is not a good cause reason attributable to the employer for claimant to have quit.

Iowa Admin. Code r. 871-24.25(21) provides:

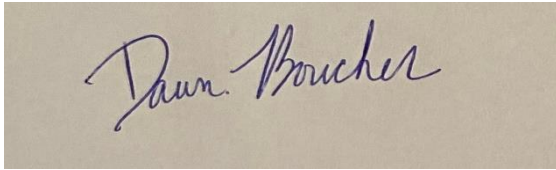
Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 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 § 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:

(21) The claimant left because of dissatisfaction with the work environment.

The administrative law judge has reviewed the facts and applicable laws carefully, and although the administrative law judge is very sympathetic to the claimant's situation, his voluntary quitting was not for a good-cause reason attributable to the employer. Benefits must be denied.

DECISION:

The November 9, 2020 (reference 01) unemployment insurance decision is modified with no change in effect. Claimant voluntarily quit employment on August 24, 2020 without good cause attributable to the employer. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his separation date, and provided he is otherwise eligible.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

February 8, 2021
Decision Dated and Mailed

db/mh

Note to Claimant

- This decision may determine you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law and 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 funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.