

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NICHOLAS LARKIN**  
Claimant

**JENSEN BUILDERS LTD**  
Employer

**APPEAL 20A-UI-08552-ED-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/17/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the July 20, 2020, (reference 01) unemployment insurance decision that denied benefits based upon his voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on September 1, 2020. The claimant, Nicholas Larkin, participated personally. The employer, Jensen Builders Ltd, participated through Director of Human Resources, Tom Nelson.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an ironworker. He began working for this employer on November 4, 2019. He quit on March 3, 2020 and was rehired on March 26, 2020. His last day physically worked on the job was May 15, 2020. His immediate supervisor was Ryan Hoyt.

During the course of claimant's employment, this employer had written policies in place. The employer has a no call, no show for three days policy in which if you don't call or show up for work for three consecutive days, you are considered to have voluntary quit. Claimant was made aware of this policy on his hire date when he was given the employee handbook.

On May 17, 2020, claimant's roommate tested positive for Covid-19. Claimant was seen by a doctor who ordered him to self quarantine for seven days and be symptom free for 72 hours. Claimant provided the doctor's note to his supervisor on May 18, 2020. Claimant did not test positive. Claimant was paid sick pay for the seven day quarantine period. At the end of the seven day quarantine, claimant made contact with his foreman and Joe Rivera and indicated he was going to remain home. However, claimant did not provide another doctor's note to his

employer after the expiration of the first seven day quarantine period. In addition, claimant did not call in and he did not report to work on May 25, 2020, March 26 2020 and March 27, 2020.

There was continuing work available if claimant had not voluntarily quit his employment. Claimant was not going to be discharged or laid off for lack of work.

### **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).

In this case claimant was absent from work on the following dates: May 25, 26 and 27, 2020. Claimant knew that he was supposed to report any absences prior to his scheduled shift start time. Claimant failed to report these absences in violation of the employer's policy.

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 § 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:

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

As such, this case must be analyzed as a voluntary quit case and not a discharge case. 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).

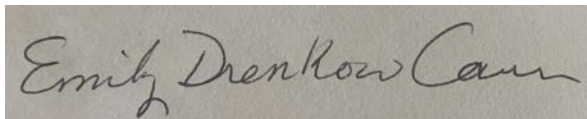
In this case, claimant's roommate tested positive for Covid-19. Claimant tested negative. Claimant submitted a doctor's note dated May 17, 2020 allowing him to stay home for seven days. Claimant did not submit another doctor's note when that seven days expired. Claimant failed to return to work on May 25, 26 or May 27 and failed to report his absence properly.

Claimant's leaving the employment was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). You will need to apply for PUA to determine your eligibility under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

**DECISION:**

The July 20, 2020, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.



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Emily Drenkow Carr  
Administrative Law Judge

September 2, 2020  
Decision Dated and Mailed

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