

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS J HAGEMAN
Claimant

FAST TRACKS LLC
Employer

APPEAL 18A-UI-04605-JP
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/18/18
Claimant: Appellant (4R)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 4, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in-person hearing was held on May 16, 2018, at 3420 University Avenue, Suite A, in Waterloo, Iowa. Claimant participated. Christina Harkness and Kevin Dill participated on claimant's behalf. Employer participated through owner Justin Franzen and office manager Kaitlin Thompson. Daycare attendant Alyssa Kane testified at the hearing. Colleen Franzen and James Franzen attended the hearing on the employer's behalf. Claimant Exhibit A was admitted into evidence with no objection. Employer Exhibits 1 and 2 were admitted into evidence with no objection. Official notice was taken of the administrative record with no objection.

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 part-time as a K9 caregiver from July 1, 2017, and was separated from employment on March 8, 2018, when he quit.

On March 8, 2018, during claimant's scheduled shift, he opened the garage door to let the outside air in while he was watching the dogs. Sometime after claimant opened the garage door, Ms. Kane asked Ms. Thompson if it was ok to shut the garage door. Ms. Thompson told Ms. Kane it was ok to shut the garage door because Mr. Justin Franzen would want the garage door shut. Ms. Kane then went and shut the garage door. Claimant asked Ms. Kane why she shut the garage door. Ms. Kane stated Mr. Justin Franzen told her she could shut the garage door. Approximately five minutes later, claimant came into the office and spoke to Ms. Thompson. Claimant asked Ms. Thompson how Mr. Justin Franzen would want his resignation, verbally or in writing. Ms. Thompson responded in writing. Claimant stated he did not think Mr. Justin Franzen or Ms. Kane thought he knew what he was doing with the dogs. Ms. Thompson told claimant that she would tell Mr. Justin Franzen when he returned. Claimant then finished

his remaining shift and left. When Mr. Justin Franzen arrived at the office, Ms. Thompson explained what claimant had stated and Mr. Justin Franzen told her he would contact claimant in the morning. Ms. Thompson did not tell claimant he was discharged.

Around 7:43 p.m. on March 8, 2018, claimant sent a text message to Mr. Justin Franzen stating "Since i havent heard from you i take it that today was my last day i will get my ck tomarrow afternoon". Employer Exhibit 1. Mr. Justin Franzen responded to claimant that he was hoping to sit down and talk to him in person. Employer Exhibit 1. Later claimant called Mr. Justin Franzen. Claimant explained to Mr. Justin Franzen about the incident with the garage door. Claimant was having issues with Ms. Kane. Claimant told Mr. Justin Franzen that if he fired Ms. Kane he would retract his two week notice. Mr. Justin Franzen told claimant that he would not discharge Ms. Kane. Claimant indicated that he was not a fan of Ms. Kane and she did not know what she was doing. Claimant asked Mr. Justin Franzen if he was discharged and Mr. Justin Franzen told him no. Claimant asked if Mr. Justin Franzen would say he was discharged so he could get unemployment insurance benefits. Claimant then got upset and stated he was going to allege that he was let go due to his disabilities. Mr. Justin Franzen never told claimant he was going to be discharged after spring break. Claimant then ended the phone call.

After March 8, 2018, claimant never returned to offer his services. After March 8, 2018, claimant never contacted the employer to discuss his employment status. The employer had work available for claimant. Mr. Justin Franzen is the only person at the employer with the authority to discharge claimant.

Claimant testified that in the months prior to his separation, he had been bitten by a dog approximately four or five times. Claimant also testified that he believed the employer was in violation of the Iowa laws, but he did not report the violations until approximately a week before this hearing. Claimant testified that Mr. Justin Franzen made inappropriate comments about his disabilities and his son.

The administrative record reflects that claimant has not requalified for benefits and had other base period wages but the record is unclear as to whether he is otherwise monetarily eligible.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit this part-time employment without good cause attributable to the employer, but has not requalified and the record is unclear as to whether claimant is otherwise monetarily eligible after removal of these wage credits.

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 Code section 96.5(1)g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on Form 65-5323, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1)"g."

Iowa Admin. Code r. 871-24.25(6) 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:

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

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 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:

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

Iowa Admin. Code r. 871-24.25(37) 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

On March 8, 2018, claimant informed the employer that he was quitting after Ms. Kane shut the garage door that he had opened. The employer accepted claimant's resignation. Although claimant may have wanted the garage door open and disagreed with Ms. Kane's decision to close it, this is not a good cause reason attributable to the employer. Claimant also testified that he quit for other reasons; however, claimant failed to show that these incidents created a detrimental or intolerable work environment. Claimant has not met his burden of proving that his voluntary leaving was for good cause attributable to the employer. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer, according to Iowa law.

Inasmuch as claimant's quit was without good cause attributable to the employer, the separation is disqualifying. Claimant has not requalified for benefits since the separation but may be otherwise monetarily eligible, according to base period wages.

DECISION:

The April 4, 2018, (reference 01) unemployment insurance decision is modified in favor of the appellant. Claimant voluntarily left the part-time employment without good cause attributable to the employer and has not requalified for benefits but may be otherwise monetarily eligible. Benefits are allowed, provided the claimant is otherwise eligible. This employer's account shall not be charged.

REMAND: Claimant's monetary eligibility after the quit of this part-time employment (employer account number 565472-000) as delineated in the findings of fact, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/scn