

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GARY A DIETERS
Claimant

DUBUQUE HOLY FAMILY CATHOLIC
Employer

APPEAL 21A-UI-22851-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (4R)

Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 2, 2021, (reference 02) unemployment insurance decision that denied benefits based upon his voluntary quit. The appeal was misplaced and not processed until November 2021. The parties were properly notified about the hearing. A telephone hearing was held on December 6, 2021. Claimant Gary Dieters participated and testified, and Diane Dieters observed on behalf of the claimant. Employer Dubuque-Holy Family Catholic participated through representative Paul Jahnke and witnesses Jeff Rush and Mary Sulentic. The parties waived due notice of the issue of reasonable assurance pursuant to Iowa Code § 96.4(5). The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did claimant have reasonable assurance between academic years or terms?
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 a custodian beginning June 3, 2019. This employer is an educational institution. Claimant worked full time. He did not work during regular school breaks or between academic years or terms.

Claimant worked during the 2019/2020 academic year. The school was closed due to Covid-19 effective in March 2020. The school remained closed for the rest of the school year, which was scheduled to end on June 4, 2020. Claimant knew that he was going to be returning as a custodian for the 2020/2021 school year because he spoke to supervisor Jeff Rush in early June 2020 notifying claimant he had a position to return to.

Claimant obtained a new job with Medical Associates. In early August 2020, claimant provided his verbal resignation to Mr. Rush. Employer accepted the resignation. Claimant began his

new position on or around September 1, 2020. He was separated from his employment with Medical Associates in December 2020.

Claimant's employment in his base period contains wages earned with a non-educational institution employer. The issue of whether claimant has sufficient non-educational wages in his base period sufficient to be monetarily eligible for benefits is remanded to the Benefits Bureau for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.4(5) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

a. Benefits based on service in an instructional, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period

immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, “educational service agency” means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

Iowa Admin. Code r. 871-24.52(9) provides in part:

(9) Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform service in the period immediately following such vacation period or holiday recess. However, the provision of subrule 24.52(6) could also apply in this situation.

Iowa Admin. Code r. 871-24.52(6) provides:

(6) Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. **However, if sufficient non-school wage credits remain on the claim to qualify under Iowa Code § 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.**

(emphasis added).

In this case, claimant does have other non-educational institution wage credits in the base period. Claimant does have reasonable assurance of continued employment for the 2020/2021 school year but may be otherwise monetarily eligible according to base period wages. Accordingly, benefits may be allowed, and the account of this employer shall not be charged.

For the reasons that follow, the administrative law judge concludes claimant’s separation from the employment is not disqualifying.

Iowa Code section 96.5(1)a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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 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).

Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). Claimant left his position with this employer for the sole purpose of accepting an offer of other employment. Even though the separation was without good cause attributable to employer and would, standing alone, disqualify claimant from receiving benefits, claimant did leave in order to accept other employment and did perform services for the subsequent employer before being separated from the new employment. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

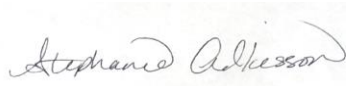
DECISION:

The February 2, 2021, (reference 02) unemployment insurance decision is modified in favor of the appellant. Claimant's separation from employment with this employer is not disqualifying because he voluntarily quit for the sole purpose of accepting better employment. Benefits are allowed, provided claimant is otherwise eligible. Employer's account shall not be charged

Claimant did have reasonable assurance of returning to work the following academic year or term but he has other wages in the base period. Benefits may be allowed, provided he is otherwise eligible, and the account of Dubuque Holy Family Catholic (account number 108530-179) shall not be charged.

REMAND:

The issue of whether the claimant has other non-educational wages in his base period sufficient to be monetarily eligible for benefits pursuant to Iowa Code §96.4(3) is remanded to the Benefits Bureau for an initial investigation and determination.



Stephanie Adkisson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

December 14, 2021
Decision Dated and Mailed

sa/mh