

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TIMOTHY M HUMMEL
Claimant

GOODWILL INDUSTRIES OF NE IA INC
Employer

APPEAL 21A-UI-13839-DG-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code 871-24.26(4) – Intolerable Work Conditions

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 2, 2021, (reference 02) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 16, 2021. Claimant participated along with his witness Megan Ries. Employer participated by Lisa Perkins, Store Manager and was represented by Thomas Kuiper, Hearing Representative. Claimant's Exhibits 1-3 were admitted into evidence. The administrative law judge took official notice of the administrative record including the fact-finding documents.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on July 20, 2020. Claimant left work on that date because he had concerns for his health and safety during the pandemic.

Claimant began working for employer as a part-time employee on May 8, 2018. Claimant helped sorting donations that came into the store. Claimant also had contact with the public when they brought in donations.

Claimant began having concerns about his health in May, 2020. Claimant met his physician who advised that he work in a ventilated area, and that he should only have contact with individuals that were wearing masks. Claimant provided a doctor's note to employer with those recommendations from his doctor on June 16, 2020.

Employer did advise its employees to wear masks and claimant's co-workers did comply with that recommendation for the most part. Claimant frequently came into contact with customers who were dropping off donations who were not wearing masks. Claimant told employer that he

had concerns with those interactions with customers, and claimant was told that employer could not force patrons to wear masks.

On or about July 20, 2020 claimant decided that he should leave the employment. The employer was not able to follow his doctor's recommendations, and he did not feel comfortable having continuous contact with the general public. Claimant had requested a leave of absence from work and he had been told that leave was not available to him. Claimant was told by a supervisor that he should resign and then reapply once the pandemic was over. Claimant resigned on that date.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because his work environment had become intolerable.

Iowa Code section 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.

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.

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).

A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added 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 Iowa Admin. Code r. 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. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Claimant's left the employment because his work environment was unsafe and intolerable, his separation from employment was for a good-cause reason attributable to the employer. Benefits are allowed.

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and 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, 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>. If this decision becomes final, or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

DECISION:

The decision of the representative dated June 2, 2021, (reference 02) is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.



Duane L. Golden
Administrative Law Judge

August 26, 2021
Decision Dated and Mailed

dlg/ol