

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SKYLAR R HARTMAN
Claimant

APPEAL 21A-UI-07111-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLUE TOP EXCAVATING LLC
Employer

**OC: 01/17/21
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On March 9, 2021, Blue Top Excavating LLC (employer/respondent) filed an appeal from the March 2, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant quit work on October 20, 2020 because working conditions were detrimental to him.

A telephone hearing was held on May 18, 2021. The parties were properly notified of the hearing. Employer participated by owner Adam Pieper. Skylar Hartman (claimant/respondent) participated personally.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time truck driver. Claimant's first day of employment was in March 2020. Claimant's immediate supervisor was Pieper. The last day claimant was present at the job performing work was October 7, 2020. Claimant called out sick on October 8 and 9, 2020. He was next scheduled to work on October 12, 2020. He did not appear for work or call to report his absences on that date or thereafter.

Claimant did not return to work because of mistreatment from a worksite foreman. The foreman was verbally abusive to claimant, including yelling at him and calling him names on an at least weekly basis. Claimant raised these concerns with Pieper most recently on October 5 or 6, 2020. Pieper told claimant he would address this issue with the foreman. However, after talking with the foreman, Pieper determined the foreman's conduct was not inappropriate and so did not direct the foreman to change his behavior.

Pieper did not inform claimant that he had spoken to the foreman and determined his behavior was not inappropriate. The foreman continued the behavior toward claimant on Wednesday, October 7, 2020, which was the final incident leading to resignation. Claimant did inform Pieper when he raised these concerns that he would not continue working there if they were not addressed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the March 2, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant quit work because working conditions were detrimental to him is AFFIRMED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

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.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

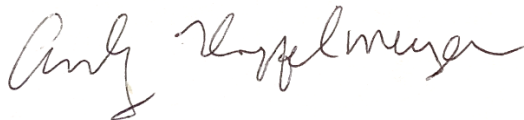
Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v.*

Emp't Appeal Bd., 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

The administrative law judge finds claimant has carried his burden of proving the voluntary leaving was for good cause attributable to employer. Claimant resigned because of persistent verbal abuse by a foreman. Claimant brought this issue to Pieper but it was not corrected. A reasonable person would find persistent verbal abuse from a foreman to be so intolerable or detrimental as to justify resignation. This is particularly where claimant put employer on notice of this issue and his intent to resign if it was not addressed and employer did not take reasonable steps to address it. Benefits are therefore allowed, provided claimant is otherwise eligible.

DECISION:

The March 2, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant quit work because working conditions were detrimental to him is **AFFIRMED**.



Andrew B. Duffelmeyer
Administrative Law Judge
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May 26, 2021
Decision Dated and Mailed

abd/scn