

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**EFREN MARTINEZ**

Claimant

**APPEAL 18A-UI-07023-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALTER TRADING CORPORATION**

Employer

**OC: 04/15/18**

**Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

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

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

Iowa Admin. Code r. 871-24.25(38) – Resignation caused discharge

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the June 20, 2018 (reference 02) unemployment insurance decision that denied benefits based upon claimant voluntarily quitting work without good cause attributable to the employer effective May 20, 2018 but allowed benefits from May 6, 2018 through May 19, 2018 due to a termination of employment by the employer prior to the claimant's expiration of his resignation period. The parties were properly notified of the hearing. A telephone hearing was held on July 17, 2018. The claimant, Efren Martinez, participated personally. CTS Language Link provided language interpreter services to the claimant. The employer, Alter Trading Corporation, participated through representative Beverly Maez and witness Myles Valencia. Employer's Exhibit 1 was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

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

Claimant was employed full-time as a production operator in the warehouse. He began working for this employer on January 13, 2011 and his employment ended on May 8, 2018. Claimant's immediate supervisor was Patricia Adkinson.

Claimant was on paid leaving pending investigation from the end of his shift on April 5, 2018 until he returned to work on May 7, 2018. The employer conducted an investigation regarding the claimant's job duties. The investigation included speaking with potential witnesses and co-workers. The investigation determined there was no misconduct and the claimant returned to work at the same job and level of pay.

On May 7, 2018, when claimant returned to work, his jacket and drawings from his child were gone from his desk. Claimant believed the employer threw these items away but he did not ask his supervisor or any management personnel where the items had gone. Prior to returning to work, claimant had received a telephone call from a person who used to work for the employer several years ago stating that he heard the claimant was laid off for stealing from the company. The claimant asked him who the source of this information was and he refused to tell the claimant who told him this information. Claimant assumed that someone in management spoke to him about this information.

When claimant returned to work he spoke to Joe Rosenbaum, the general manager, about his concerns with someone leaking information that he stole from the company. Mr. Rosenbaum told claimant to "just forget about all of it". Claimant felt his co-workers would treat him differently due to the investigation. At the end of his shift on May 7, 2018, claimant gave the employer notice that he intended to resign effective May 18, 2018. See Exhibit 1. The following day on May 8, 2018, claimant was told by Mr. Valencia that he did not need to continue working and could leave.

The claimant's administrative records establish that he filed an initial claim for unemployment insurance benefits with an effective date of April 15, 2018. No weekly-continued claims were filed between April 15, 2018 and May 26, 2018. Claimant filed an additional claim effective May 27, 2018. The claimant has filed weekly-continued claims between May 27, 2018 and July 14, 2017; however, no payments have been made due to the disqualification decision dated June 20, 2018 (reference 02) that found claimant ineligible due to him voluntarily quitting work at this employer. The employer did participate in the initial fact-finding interview regarding the claimant's separation from employment.

#### **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.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been 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. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 tendered his verbal and written resignation to the employer with an effective date of May 18, 2018. 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).

Claimant believed that his work environment was hostile due to his involvement in the employer's investigation. However, no discipline was issued to claimant following the investigation and he was allowed to return to work at the same job and pay.

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.

As such, if claimant establishes that he left due to intolerable or detrimental working conditions, benefits would be allowed. Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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 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. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

“Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)(“[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith”); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer “free from fault”); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)(“The good cause attributable to the employer need not be based upon a fault or wrong of such employer.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, claimant was not required to give the employer any notice with regard to the intolerable or detrimental working conditions prior to him quitting. However, claimant must prove that the working conditions were actually intolerable or detrimental.

While the administrative law judge is sympathetic to the claimant regarding his personal belongings being moved, claimant did not speak to his supervisor to determine what actually happened to his personal belongings. Claimant speculated that the personal belongings were thrown away, but there is no proof that they actually were. Further, claimant speculated that management spoke to a person who was no longer working for the employer about claimant being laid off due to stealing from the company. This person refused to tell claimant who his source was. It is quite possible that it was a co-worker and not another person in management that told him this, especially in light of the fact that management interviewed witnesses during the investigation. The claimant has failed to prove that these incidents rose to the level of intolerable or detrimental working conditions. As such, he has failed to establish that he voluntarily quit with good cause attributable to the employer and his separation from employment, effective May 20, 2018, is disqualifying.

However, when the claimant tendered his resignation effective May 18, 2018, he was not allowed to work out the remainder of his resignation period. His last day worked was May 8, 2018, instead of his intended May 18, 2018 resignation date. The employer failed to prove that the May 8, 2018 discharge was due to job-related misconduct by the claimant. As such, Iowa Admin. Code r. 871-24.25(38) establishes that no disqualification shall be imposed from the last day of work, May 8, 2018, until the proposed date of resignation, May 18, 2018.

Iowa Admin. Code r. 871-24.25(38) provides:

Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

As such, there is no disqualification imposed due to claimant's separation from employment from May 8, 2018 through May 18, 2018 due to Iowa Admin. Code r. 871-24.25(38). However, claimant failed to file any weekly-continued claims for benefits and no benefits were paid from May 8, 2018 through May 18, 2018. Further, because claimant's initial resignation was not for a good-cause reason attributable to the employer, benefits are denied effective May 20, 2018 due to the claimant voluntarily quitting.

Because no benefits have been paid to claimant, the issue of overpayment of benefits is moot. The employer's account shall not be subject to charges effective May 20, 2018 due to the disqualifying separation from employment based upon claimant voluntarily quitting without good cause attributable to the employer.

**DECISION:**

The June 20, 2018 (reference 02) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer but was discharged from employment prior to the end of his resignation notice period for no disqualifying reason. Claimant is eligible for benefits from May 6, 2018 through May 19, 2018, provided claimant meets all other eligibility requirements. Benefits are denied effective May 20, 2018 due to claimant voluntarily quitting without good cause attributable to the employer. Unemployment insurance benefits are denied effective May 20, 2018 until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs