

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DARIAN DAVIS
Claimant

FIVE GUYS OPERATIONS LLC
Employer

APPEAL 21A-UI-08580-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On March 24, 2021, Darian Davis (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated March 15, 2021 (reference 03) that denied benefits based on a finding claimant voluntarily quit on January 4, 2021 due to dissatisfaction with his work conditions.

A telephone hearing was held on June 9, 2021. The parties were properly notified of the hearing. The claimant participated personally. Former Managers Grant Hill, Andrew Ratchford, and Travis Sedlacek participated as witnesses for claimant. Five Guys Operations, LLC (employer/respondent) participated by District Manager Trent Mohr.

Claimant's exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation from employment 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 began working for employer on February 28, 2020. Claimant's immediate supervisor was General Manager Jordan Ware. Ware reported in turn to Mohr. Claimant was employed as a full-time manager. The last day claimant worked on the job was January 4, 2021. Claimant resigned at that time.

Claimant resigned due to "toxicity" at work. Approximately a month before his resignation, Mohr inadvertently took claimant's personal mailbox key off a keychain that was sitting out at the store. Mohr intended to only take a store key, a safe key, and a store mailbox key off the keychain. This is because keys are not meant to be left out, claimant no longer needed a store key, and claimant was not meant to have a safe key. What Mohr thought was a store mailbox key was actually claimant's personal mailbox key. When claimant brought to Mohr's attention that he had taken his personal mailbox key, Mohr promptly returned it to him.

Nonetheless, claimant was upset by Mohr's actions and believed Mohr and Ware had been dishonest with him regarding their taking the keys. Claimant, Mohr, and Ware had a meeting shortly thereafter where Mohr and Ware raised unrelated concerns with claimant's performance. Claimant viewed their raising of those concerns to be retaliatory. However, claimant was not formally disciplined nor threatened with discharge or asked to resign at that time.

After that meeting, Mohr spent more time at claimant's location. Claimant also felt this was retaliatory and was meant to subject him to increased scrutiny. Claimant was written up in early January 2021 for leaving early without permission on December 30, 2020.

Claimant also felt that employer was making unreasonable requests of him, including traveling to other stores to do tasks. Claimant informed employer he no longer wished to do that work, which in part prompted Mohr taking the store key. It was no longer necessary for claimant to have the key since he was no longer going to do that work.

Claimant resigned after Mohr told him coworkers had complained to him about a comment claimant made while working on the line. Mohr told claimant they could all sit down to try to work it out but claimant declined to do so and instead resigned at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated March 15, 2021 (reference 03) that denied benefits based on a finding claimant voluntarily quit on January 4, 2021 due to dissatisfaction with his work conditions is **AFFIRMED**.

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. 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. 871-24.25 provides in relevant part:

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.

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).

It is the duty of the administrative law judge, as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The administrative law judge found the testimony from Mohr to be more credible and reliable than the testimony offered by claimant and his witnesses. Mohr's testimony was consistent and believable. Comparatively, the testimony from Hill, Ratchford, and Sedlacek was not credible or reliable. They largely testified to issues that were unrelated to the reasons claimant gave for resigning, including making highly personal and inflammatory allegations about Mohr that were unsupported by other evidence. This in turn calls into question the reliability of claimant's testimony, as the witnesses he chose to call offered testimony inconsistent with his and that was clearly calculated to attack Mohr's character rather than to provide relevant information. Factual findings were made accordingly.

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried his burden of proving the voluntary leaving was for

good cause attributable to employer. The separation from employment was therefore disqualifying.

Claimant's resignation was due to dissatisfaction with work conditions. Mohr's taking of claimant's personal mailbox key was inadvertent and was remedied shortly thereafter. The other things complaint complains of are best described as perceived slights. Claimant has not proven that Mohr retaliated against him or that the work environment was otherwise so "toxic" as to justify resignation. A reasonable person would not have found the working conditions so intolerable or detrimental as to justify resignation.

DECISION:

The decision dated March 15, 2021 (reference 03) that denied benefits based on a finding claimant voluntarily quit on January 4, 2021 due to dissatisfaction with his work conditions is **AFFIRMED**. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515) 478-3528

June 24, 2021
Decision Dated and Mailed

abd/ol

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.