

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT J SCHMITZ
Claimant

ADDOCO INC
Employer

APPEAL 20A-UI-10906-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/29/19
Claimant: Appellant (1R)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Robert Schmitz (claimant) appealed a representative's August 26, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the Addoco (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 23, 2020. The claimant was represented by Natalia Baskovich, Attorney at Law, and participated personally. The employer participated by Marilyn Thill, Office Manager; Steve Rodham, President; Paul Schmidt, Plant Manager; and Mark Wagner, Executive Vice President.

The claimant offered and Exhibit A was received into evidence. The administrative law judge took official notice of the administrative file.

During the hearing the issue of whether the claimant was able to and available for work arose. The parties waived notice and the matter was heard.

ISSUE:

The issues include whether the claimant was separated from employment for any disqualifying reason and whether the claimant was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from February 14, 2020, to March 27, 2020, as a full-time laborer. The claimant was diagnosed with chronic obstructive pulmonary disease and his wife was diagnosed with asthma.

On March 27, 2020, the claimant told the plant manager that he had decided to shelter in place due to the Covid-19 pandemic. The claimant did not have a doctor's note indicating he should stop working. The plant manager accepted the claimant's resignation but asked him to think about his decision and contact him the following week. The claimant called the plant manager

the next week and said he had not changed his mind. Continued work was available with the employer had he not resigned.

The claimant filed for unemployment insurance benefits with an effective date of December 29, 2019. His weekly benefit amount was determined to be \$443.00. The claimant received benefits of \$443.00 per week from December 29, 2019, to the week ending February 15, 2020. This is a total of \$3,101.00 in state unemployment insurance benefits during that time.

He filed an additional claim on April 5, 2020. The claimant received benefits of \$443.00 per week from April 5, 2020, to the week ending August 15, 2020. This is a total of \$8,417.00 in state unemployment insurance benefits after the separation from employment. He received \$443.00 in Pandemic Emergency Unemployment Compensation. He also received \$9,600.00 in Federal Pandemic Unemployment Compensation for the sixteen-week period ending July 25, 2020. Each week that the claimant filed his weekly claim after April 5, 2020, the claimant was "sheltering in place" or staying home. The claimant was unaware of any job he could perform in that circumstance.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant voluntarily quit work without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25(37) provides:

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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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 claimant's intention to voluntarily leave

work was evidenced by his words and actions. He told the employer he was going to “shelter in place” and stopped appearing for work. When an employee gives notice of an intention to quit and the employer accepts the employee’s resignation, his leaving is without good cause attributable to the employer. The claimant told the employer he was quitting and the employer accepted the claimant’s resignation. The idea to leave work came from the claimant, not the employer. The claimant’s leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

Iowa Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

When employees decide not to work and limit hours, they are considered to be unavailable for work. The claimant has decided to stay home and not work to be safe. The claimant initiated the change in hours, not the employer. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from March 30, 2020.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below.

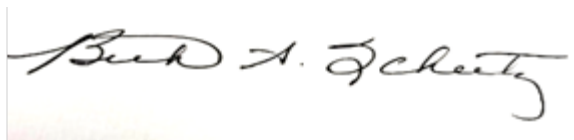
The issue of whether claimant has been overpaid unemployment insurance benefits, Pandemic Emergency Unemployment Compensation, and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The representative’s August 26, 2020, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant’s weekly benefit amount provided the claimant is otherwise eligible. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from March 30, 2020.

The issue of whether claimant has been overpaid unemployment insurance benefits, Pandemic Emergency Unemployment Compensation, and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If 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 due to disqualifying separations, 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>.



Beth A. Scheetz
Administrative Law Judge

October 26, 2020
Decision Dated and Mailed

bas/scn