

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHAEL A JOHNSON**  
Claimant

**C & S PRODUCTS CO INC**  
Employer

**APPEAL 18A-UI-08952-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/29/18**  
**Claimant: Respondent (4)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Admin. Code r. 871-24.25(38) – Quit but Fired Before Notice Period Expires

**STATEMENT OF THE CASE:**

The employer filed an appeal from the August 16, 2018, (reference 02) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged and the employer did not establish willful or deliberate misconduct. The parties were properly notified of the hearing. A telephonic hearing was held on September 12, 2018. The claimant, Michael A. Johnson, participated. The employer, C & S Products Company, Inc., participated through Brenda McNealey, HR Manager; and Brian Fredericks, Building and Grounds Manager. Employer's Exhibits 1 and 2 was received and admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUE:**

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?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a building and grounds employee, from June 5, 2017, until July 27, 2018, when he was discharged after submitting his notice of resignation. On July 26, the employer had a meeting with claimant to issue him a disciplinary action. During that meeting, claimant stated that he was resigning. He submitted a resignation notice identifying August 31, 2018, as his last day of employment. On July 27, the employer decided to just end claimant's employment effective immediately. Claimant's job had not been in jeopardy prior to him submitting his resignation, and McNealey testified that the incident that triggered the discharge was claimant resigning from his job.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,004.00, since filing a claim with an effective date of July 29, 2018, for the six weeks ending September 8, 2018. The administrative record also establishes that the employer

did not participate in the fact-finding interview, make a first-hand witness available for rebuttal, or provide written documentation that, without rebuttal, would have resulted in disqualification.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant resigned and then was fired before the end of his notice period.

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 Admin. Code r. 871-24.25 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: ...

(28) The claimant left after being reprimanded.

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). Here, the evidence presented during the hearing shows that claimant quit after being reprimanded. The average employee in claimant's situation would not have felt similarly compelled to end his employment. 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). Claimant notified the employer that he was resigning. Claimant has not presented good cause for resigning, and benefits are withheld.

However, claimant was not allowed to work out his full notice period. Iowa Admin. Code r. 871-24.25(38) 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:

(38) 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 discussed above, claimant's decision to quit because of a reprimand was not a good cause reason attributable to the employer. However, after claimant submitted his resignation, the employer discharged him. Because the discharge was in response to a resignation notice, no misconduct is established. Since the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is entitled to benefits from the date of termination until the effective date of the proposed resignation. The administrative record shows that claimant last received benefits for the week ending September 1, 2018. This week would have been the final week of his notice period and thus the final week to which he would be entitled to benefits. Therefore, the issues of overpayment, repayment, and chargeability are moot.

**DECISION:**

The August 16, 2018, (reference 02) unemployment insurance decision is modified in favor of the appellant/employer. Claimant voluntarily left the employment without good cause attributable to the employer. However, he was fired before the effective date of his resignation. Benefits are allowed from his last day worked through the effective date of his resignation, August 31, 2018. Thereafter, benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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