

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

XAVIER L NEWBERRY
Claimant

BRUS CONSTRUCTION LLC
Employer

APPEAL 21A-UI-01126-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/13/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On December 8, 2020, Xavier Newberry (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated December 2, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on September 11, 2020 without good cause attributable to employer.

A telephone hearing was held on February 15, 2021. The parties were properly notified of the hearing. The claimant participated personally. Brus Construction LLC (employer/respondent) participated by Office Manager Christa Brus. HR Manager Melody Brantner participated as a witness for employer.

Employer's exhibits 1-4 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 worked for employer full-time as a laborer. Claimant's first day of employment was April 17, 2017. Claimant was supervised by Chris Anderson and Chad Brus. The last day claimant worked on the job was September 11, 2020. Claimant resigned from employment on that date.

Claimant resigned after being reprimanded by Anderson for being careless when backing up a truck. Claimant had run over some tools when he backed up the truck. Claimant resigned after being reprimanded.

Claimant alleges he was subjected to a pattern of verbal and physical abuse by Chad Brus and Anderson which ultimately led to his resignation. However, claimant was largely unable to recall when these incidents occurred. He provided no documentation or witness testimony in support of these allegations, despite claiming that his father – who previously worked for employer – was

subject to similar treatment. Claimant did not report these allegations to members of management or contact state or local authorities to report them.

Employer was aware of claimant's allegations of abuse, as they were contained in his appeal letter. Chad Brus and Anderson still work for employer. However, employer did not make them available for the hearing. Employer was largely unable to explain why they did not participate in the hearing. Employer generally denied the allegations of abuse.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated December 2, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on September 11, 2020 without good cause attributable to employer is **AFFIRMED**.

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. 871-24.25 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:

(28) The claimant left after being reprimanded.

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:

(2) The claimant left due to unsafe working conditions.

(3) The claimant left due to unlawful working conditions.

(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).

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 did not find either party’s evidence to be particularly reliable. Claimant alleges he was subjected to a pattern of verbal and physical abuse by Chad Brus and Anderson which ultimately led to his resignation. However, claimant was largely unable to recall when these incidents occurred. Furthermore, he provided no documentation or witness testimony in support of these allegations, despite claiming that his father – who previously worked for employer – was subject to similar treatment. Claimant did not report these allegations to members of management or contact state or local authorities to report them. The lack of details, corroborating evidence, and prior complaints or reports make it difficult to find claimant was subjected to the treatment he alleges.

Employer generally denied the allegations of abuse. However, despite being aware of claimant’s allegations and the alleged perpetrators still working for employer, neither was made available for the hearing to offer first-hand testimony rebutting the allegations. It is puzzling why employer would not involve them in the hearing, given claimant’s allegations. Employer was largely unable to explain why they did not participate in the hearing.

Because neither party’s evidence was particularly reliable, the administrative law judge was only able to make limited findings of fact. Claimant resigned after being reprimanded. Resigning after being reprimanded is presumed to be without good cause attributable to employer and the administrative law judge finds it was without good cause here. While claimant alleged he resigned

due to unlawful, unsafe, and intolerable or detrimental working conditions, he has not carried his burden of proving that was the case. As such, benefits must be denied.

DECISION:

The decision dated December 2, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on September 11, 2020 without good cause attributable to employer 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
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

February 26, 2021
Decision Dated and Mailed

abd/kmj

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>.