

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES R AUDSLEY
Claimant

APPEAL 17A-UI-08900-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ATHENE EMPLOYEE SERVICES LLC
Employer

**OC: 07/30/17
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 23, 2017, (reference 03) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on September 19, 2017. Claimant participated personally and was represented by attorney EJ Flynn. Employer participated through human resource senior advice partner Tina Finn. Claimant's Exhibits A through I were received. Employer's Exhibit 1 was received.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on February 6, 2017. Claimant last worked as a full-time post issuing process representative. Claimant was separated from employment on August 1, 2017, when he resigned.

Claimant began working at employer through a contractor in October 2016. Claimant was hired by employer on February 6, 2017.

First year employees are entitled to paid time off in an amount of at least 20 days per year. Paid time off is earned each pay period.

Employer has a policy on attendance. It states that an employee will be given an occurrence when the employee has an unscheduled or unapproved absence. The policy states employees will be given a verbal warning after five occurrences, a written warning after six occurrences, and may be terminated after accruing six occurrences. Claimant was aware of the policy.

Employer has a policy on leave covered by the Family and Medical Leave Act (FMLA). It states employees will only be eligible for leave after 12 months of continuous employment during which 1,250 hours were worked.

Employer has a policy on short term disability. Employees are only eligible for short term disability benefits if they are incapacitated for at least five business days or seven calendar days.

In February 2017, claimant was verbally reprimanded for failing to attend a mandatory lunch meeting. Claimant was upset but did not resign.

On May 5, 2017, claimant injured his wrist. It was not a work injury. Claimant missed work on May 18, 2017, to attend a doctor's appointment for the injury.

In June 2017, claimant's 15-year old daughter came from out of state to visit him for the summer. Claimant exhausted his paid time off spending time with his daughter. On June 28, 2017, claimant asked employer if he could use unpaid leave to spend additional time with his daughter in July.

On July 5, 2017, claimant's supervisor, Kristen Johnson, sat down with him to discuss his request for unpaid leave. Johnson explained employer does not offer unpaid leave in his situation, but that he could miss work and would be assigned "occurrences" under employer's attendance policy.

On July 7, 2017, claimant had a doctor's appointment regarding his wrist injury. He was told that he would need to see an orthopedic surgeon and that it was possible he would need surgery.

On July 10, 2017, claimant asked employer if he could cover past and future time off due to his wrist injury with unpaid FMLA leave. Claimant noted he had exhausted his paid time off spending time with his daughter. Employer informed claimant he could apply for short term disability benefits if he was incapacitated for five consecutive work days and that he did not qualify for FMLA because he had not had one year of continuous employment. Employer issued claimant a document denying his request for FMLA leave based on the fact he had only been with employer for five months and had not worked 1,250 hours.

On July 11, 2017, claimant responded to employer's denial by stating he had actually worked since October 2016 and his time with the contracting agency should count toward his request. The same day, employer provided updated information to claimant stating his time with the contractor would count, but that he still would not be eligible until he had one year of continuous employment.

Claimant began missing work to spend time with his daughter, even though he had no paid time off available and he was aware he would accrue occurrences under the attendance policy.

At some point, claimant asked employer about possible orthopedic accommodations for his wrist injury. On July 18, 2017, claimant was informed that such accommodations were possible if he provided a doctor's note. Claimant had a doctor's appointment on July 19, 2017, but did not request a note as he determined he ultimately did not need accommodations.

Also on July 18, 2017, claimant was given a verbal warning regarding attendance occurrences.

After a confusing exchange of information between claimant and employer's human resource department, on July 21, 2017, it was again reiterated to claimant that he was not eligible for FMLA and it appeared he also did not qualify for short term disability benefits based on the length of his incapacitation.

Claimant did not attend work from July 24 through July 28, 2017, and instead spent time with his daughter. Claimant did not have paid time off available to cover the absences.

Claimant expected his paycheck to be issued on Friday, July 28, 2017, and arrive in the mail on July 31, 2017.

Employer pays its employees on a "current" basis. That means employer would have had to process claimant's paycheck before Friday, July 28, 2017, for the pay period ending Monday, July 31, 2017. Therefore, when the paycheck was prepared, employer did not know yet what claimant's actual hours worked would be for the pay period. Claimant understood this. It turned out that claimant worked a different number of hours than assumed during the pay period due to the fact that claimant missed over an entire week of work and had little to no paid time off available. Therefore, employer voided the issued paycheck and claimant did not receive a check in the mail on July 31, 2017.

On July 31, 2017, claimant decided to resign and move to South Carolina. Claimant did not attend work that day, and had no paid time off to cover the absence.

On August 1, 2017, claimant sent his supervisor a text message stating:

Hi Kristen, This is James Audsley. I've decided to move to SC. I will not be returning to ATHENE. Sorry 4 the short notice :(I just located an apartment and need to get there right away and get work. I will be leaving in a few days. I meant to call/text yesterday, just found your number.

Later, after claimant's separation, he asked employer about his missing paycheck. Employer explained how it reconciled claimant's hours worked and issued a new paycheck for a smaller amount.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was 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.

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).

In this case, claimant resigned to move to South Carolina.

Iowa Admin. Code r. 871-24.25(2) 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:

(2) The claimant moved to a different locality.

Claimant's resignation due to his move to South Carolina was not for a good cause reason attributable to employer.

Claimant also asserts he quit due to harassment.

Claimant asserts he disagreed with being required to attend a mandatory lunch. He became aware of the issue in February 2017, but did not resign. Claimant did not resign for this reason.

Claimant also takes issue with the way employer dealt with his attendance beginning in June 2017. Employer responded to claimant's requests for medical leave in a prompt, professional fashion. Employer accurately informed claimant on several occasions that he was not entitled to FMLA leave. Employer accurately informed claimant on several occasions that it did not appear he was entitled to short term disability benefits and claimant does not assert that he was. Although employer would have accommodated claimant's wrist injury, he ultimately determined an accommodation was unnecessary. Employer fairly applied its attendance policy to claimant after he exhausted his paid time off to spend additional time with his teenaged daughter. Employer processed claimant's last paycheck in accordance with its accounting system of which claimant was aware. Claimant did not even ask about his last paycheck until after he resigned.

A reasonable person would not have found this work environment intolerable.

Claimant failed to meet his burden to establish he resigned for a good cause reason attributable to employer.

DECISION:

The August 23, 2017, (reference 03) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. 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.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/scn