

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**WILLIAM MERCADO DIAZ**  
Claimant

**PRESTAGE FOODS OF IOWA LLC**  
Employer

**APPEAL 20A-UI-06863-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On June 24, 2020, William Mercado Diaz (claimant) filed an appeal from the June 16, 2020, reference 01, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with Prestage Foods of Iowa, LLC (employer) because he was dissatisfied with the working conditions which does not constitute good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing began on July 30, 2020 and concluded on August 4, 2020. The claimant and Domingo Nunez participated. The claimant was represented by Attorney William H. Habhab. The employer participated through Pamela Webster, Director of Human Resources, and it was represented by Attorney Lynn Collins Seaba. The Claimant's Exhibit 1 and the Employer's Exhibits A and B were admitted into the record without objection. Clara (employee number 12825) and Enrique (employee number 4949) from CTS Language Link provided Spanish interpretation.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Production Team Member beginning on February 18, 2019, and was separated from employment on April 15, 2020, when he quit. The claimant is a person over the age of 65 and has medical conditions that put him at higher risk for contracting COVID-19.

In March, the employer took steps to increase the safety in the work environment including, but not limited to, installing Plexiglas partitions on the work floor, providing and mandating masks be worn by employees, and lengthening the lunch break while providing additional eating spaces. On April 6, the employer began offering leave to employees affected by the COVID-19 pandemic and became more liberal with their attendance policy. The week of April 15, the employer began taking employee temperatures when they entered the building and offered the first round of testing to its employees for COVID-19.

On April 15, the claimant notified the employer that he was quitting due to a fear of getting sick. He returned his equipment. The person he spoke with advised him that he would not be eligible to reapply for employment for 90 days. On April 17, the claimant saw his doctor and his doctor wrote him a note stating he was high risk for COVID-19 infection.

**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. Regular unemployment insurance benefits are denied.

Iowa Code section 96.5(1)(d) 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:

d. The individual left employment because of illness, injury, or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury, or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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.

...

(4) The claimant left due to intolerable or detrimental working conditions.

...

(6) Separation because of illness, injury, or pregnancy.

...

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected

with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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:

...

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(21) The claimant left because of dissatisfaction with the work environment.

...

(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.

The 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). 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 findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events. The claimant provided conflicting testimony and was evasive when he did not want to answer a question. Additionally, the documentation provided tends to support the employer's version of events.

In this case, the claimant expressed his intention to quit when he signed the resignation letter and returned the employer's equipment, which he needed to do the job. The claimant has not established that he left work on the advice of a medical professional. The claimant's doctor identified him as a high-risk individual in his note but there is no evidence he advised to the claimant he could not work or needed to self-isolate. Additionally, the claimant cannot establish an unsafe working environment as the employer took reasonable steps to make the work environment safer during the pandemic. While the claimant's decision to leave employment due to his fear of contracting COVID-19 may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

**DECISION:**

*Regular Unemployment Insurance Benefits Under State Law*

The June 16, 2020, reference 01, unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Regular unemployment insurance 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.

*Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act*

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 CARES Act. 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 in FPUC. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.



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Stephanie R. Callahan  
Administrative Law Judge

August 10, 2020  
Decision Dated and Mailed

src/scn

*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, 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.