

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ZACHARY K NORMAN
Claimant

ADVANTAGE SALES & MARKET
Employer

APPEAL 17A-UI-00706-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/11/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.25(3) – Left to Seek Other Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 12, 2017 (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit his employment without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on February 9, 2017. The claimant, Zachary K. Norman, participated. The employer, Advantage Sales & Market, participated through Adrian Lopez, Retail Supervisor.

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 was employed full time, most recently as a retail sales associate, from July 25, 2016 until December 1, 2016, when he quit. In November 2016, the entire company had a conference call and announced that it intended to restructure. Among the changes that would be transpiring in the future, the company planned to change the qualifications for the position that claimant held in the company. Claimant testified he would no longer qualify for his position. Therefore, he decided to leave his employment and seek work in the restaurant industry. Claimant was not told that he was going to be discharged, and continued work was available at the time claimant quit his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from employment was without good cause attributable to the employer. Benefits are denied.

Iowa Code § 96.5(1)a provides:

Causes for disqualification.

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

This is not a scenario in which claimant qualifies for benefits on the basis that he quit his employment to accept another job. While claimant told his employer that he was leaving for another job, he testified that he had not secured a position at the time he resigned. Claimant's hope to find new employment is not sufficient to qualify him for benefits under this provision of the Iowa Code.

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:

(3) The claimant left to seek other employment but did not secure employment.

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). The average person in claimant's circumstance would not feel similarly compelled to quit 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 his employer that he was resigning and he did not return to work. Subsequently, he returned his

company equipment, further demonstrating his intent to end his employment. Claimant's decision to end his employment before the restructuring occurred and while continued work was still available was without good cause attributable to the employer. Benefits are withheld.

DECISION:

The January 12, 2017 (reference 03) unemployment insurance decision is affirmed. Claimant separated from 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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