

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WENDE L CHRISTIANSEN
Claimant

DEN HARTOG INDUSTRIES INC
Employer

APPEAL 23A-UI-10807-DS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/22/23
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(19) – Voluntary Quit
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

On November 18, 2023, the claimant filed a timely appeal from the unemployment insurance decision dated November 13, 2023, (Reference 01) that denied unemployment insurance benefits, finding that the claimant had voluntarily quit the employment without good cause attributable to the employer. Notice of hearing was mailed to the parties' last known addresses of record for a telephone hearing to be held at 11:00 a.m. on December 21, 2023. The claimant participated personally and was represented by Attorney Mary Hamilton. The employer participated through Erica Witt, Human Resources Manager. Claimant's Exhibit 1 was admitted to the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Did claimant voluntarily quit the employment without good cause attributable to employer?
Is the claimant able to work and available for work?

FINDINGS OF FACT:

The administrative law judge finds that:

The claimant worked as a full-time Operator for this employer from January 10, 2022, until October 13, 2023, when the employer determined that she voluntarily quit the employment. The claimant last worked on July 14, 2023. On the following Monday, July 17, 2023, the claimant contacted the employer to advise that she had been involved in a car accident. The claimant subsequently completed the necessary forms for coverage of leave under the Family and Medical Leave Act. The claimant never returned to the job but continued to provide documentation of her medical situation from medical professionals. On or about October 4, 2023, the claimant was contacted by the employer and advised that she was nearing exhaustion of her leave. Specifically, the claimant would need to return to work on October 13, 2023. The claimant advised the employer that she did not believe this would be possible. The claimant did not contact the employer any further between that date and October 13, 2023. The employer did receive a notification from the claimant's medical provider dated October 11, 2023. (Claimant's Exhibit 1) This notice advised the employer that the claimant could not return to work until November 1,

2023. In further discussion, the medical provider advised the employer that the claimant was not able to work. Although check boxes are provided on this notice for a variety of physical limitations, none of the boxes are checked to indicate any restriction or lack of restriction whatsoever. When the claimant's leave was exhausted and she did not return to work on October 13, 2023, the employer deemed the claimant to have quit the employment.

The week after the separation, the claimant contacted the employer and claimed that she in fact suffered a work-related injury that had occurred in July. This was the first the employer had heard of this claim. The claimant had suffered a work-related injury to her pinky finger in February 2023, and had been undergoing occupational therapy for that condition into the Summer of 2023. After the separation from employment in October 2023, the claimant told the employer that on or about July 20, 2023, the claimant had fallen on her way into an occupational therapy appointment and had suffered a new injury to her knee, unrelated to the car accident. The claimant believes the employer should have known of this injury because she left a voicemail for someone other than the Human Resources Manager around the time of the injury. The claimant's job was not in jeopardy and continuing work was available had she not quit the employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer. Further, the claimant was not able to work or available for work when her FMLA-covered leave exhausted. Benefits are denied.

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.

Iowa Admin. Code r. 871-24.25(4) 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.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search

requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

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 (Ia. 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).

This Administrative Law Judge does not find credible the claimant's testimony that she advised the employer of a new, work-related injury in July of 2023. The claimant testified that she left a message for another employee—other than the Human Resources Manager involved in her leave request and approval—around the time of the incident. It is not reasonable to believe that the claimant then relied on this message for the next three months of approved and covered leave with no further documentation or discussion, and that she next had reason to discuss it with the employer upon notification of the separation. The claimant was advised during the October 4, 2023, telephone discussion that her leave would soon be exhausted, and there is nothing in the record to suggest that she told the employer she had a work-related injury. The employer credibly testified that they were first advised of this new claim by both claimant and counsel after the separation. The claimant was on leave until October 13, 2023, due to her non-work-related injuries from the July car accident and has not met her burden to show that she quit the employment for good cause attributable to the employer. The claimant was not able to work or available for work, and such condition was verified by her medical provider. Benefits are denied.

DECISION:

The November 13, 2023, (Reference 01) unemployment insurance decision denying benefits is **AFFIRMED**. The claimant quit the employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



David J. Steen
Administrative Law Judge
Iowa Department of Inspections, Appeals and Licensing
Administrative Hearings Division - UI Appeals Bureau

January 4, 2024
Decision Dated and Mailed

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.