

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK A BURGIN
Claimant

CITY LAUNDERING CO
Employer

APPEAL 16R-UI-04655-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/10/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)A – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 2, 2016, (reference 01) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on May 9, 2016. The claimant, Mark A. Burgin, participated personally. The employer, City Laundering Co., participated through Controller Cara Jensen, Service Manager Ken Schnor, and Route Supervisor Dennis Eikenberry. Employer's Exhibits 1 through 3 were admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a Route Sales Representative. He was employed from June 2, 2003 until January 4, 2016. Claimant's job duties included loading and delivery products from the employer to customers. Products included uniforms, paper, mats, linens, soaps, towels and other various products. Claimant's duties also included customer relations in acquiring contracts for the customers on his route and reviewing invoices for accuracy.

During claimant's employment with this company he had several positions that he worked including route skipper and route sales representative. On January 4, 2016 claimant had been working two days as a route skipper and two days as a route sales representative.

On January 4, 2016 claimant was called into Mr. Schnor's office to discuss several matters. Mr. Eikenberry, claimant's direct supervisor, was also in the meeting. Mr. Schnor asked claimant to review an invoice from several months prior that the client had complained was incorrect. Claimant could not explain any discrepancies on the invoice because this customer had quit receiving services several months prior. Claimant then reported that he was frustrated

with his job because there were several other clients that had quit. He had been promised a raise and that he never received the raise. He understood that he was supposed to be getting another day's route and additional customers but that had not yet been done.

Mr. Schnor then asked claimant if he "was going to own the route" meaning the Iowa City route. "Owning a route" means accepting the customers on this route and completing all the necessary job duties. Claimant replied "I guess not" to Mr. Schnor. He then asked claimant "do we need to look at your employment" and claimant said "I guess so". Claimant then stood up and left Mr. Schnor's office. Mr. Schnor then looked at Mr. Eikenberry and asked "did he just quit?" and Mr. Eikenberry responded with "I think so". See Exhibit 2.

When claimant left the office he only spoke to Dennis Nuss, who is another driver. Claimant reported that he told Mr. Nuss "I guess someone else will run your route tomorrow, I got fired, I'm outta here". Employer's Exhibit 1, which is Mr. Nuss's statement dated January 6, 2016, states that claimant said "I guess someone else will run your route tomorrow, I'm done." Then Mr. Nuss stated "What do you mean?" And claimant replied "I gone. I'm out of here." Mr. Nuss did not testify.

Claimant tried to speak with Melissa Stewart, who was the Human Resources representative, but she was busy. Claimant waited a few minutes to speak with her but then decided to leave when she was not able to immediately talk with him.

In a discharge situation the employer typically involves Ms. Stewart and retrieves the employee's telephone, which is company property. In this case Ms. Stewart was not involved in the meeting and claimant left with the company telephone.

Prior to this incident claimant had only received one written disciplinary warning. This warning was in October of 2010 when he and Mr. Eikenberry were in a heated verbal confrontation and claimant slammed a cart into the side of his delivery truck.

REASONING AND CONCLUSIONS OF LAW:

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

The first issue to be decided is whether or not the claimant quit or was discharged from employment.

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 Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

- a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Claimant never used the words "I quit" and employer never used the words "You are fired". Claimant believed that he was being discharged from employment because Mr. Schnor asked him if he was going to own his route and he replied no and following that Mr. Schnor stated "do we need to look at your employment?" Claimant responded with "I guess so" and then walked out of the room using profanity. Because claimant had worked in several different positions with the employer, it is believable that Mr. Schnor was asking claimant about whether or not he wanted to continue in his route sales representative position and not that he was discharging claimant from employment. Further, claimant was not asked to return his company phone.

Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer. *LaGrange v. Iowa Dept. of Job Service*, (Unpublished Iowa Appeals 1984). 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). In this case the claimant mistakenly believed that he was being discharged.

Further, claimant failed to report for any further shifts or speak to anyone to confirm that he was actually being discharged from employment. Claimant voluntarily quit his employment, he was not discharged.

The next step in the analysis is to determine whether or not the claimant left for good cause attributable to the employer. 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).

Iowa Admin. Code r. 871-24.25(21) 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:

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

The claimant quit his employment because he was dissatisfied with his work environment. Several customers on his route had left which meant less commission for claimant. Claimant believed he had been told that he was going to get a raise but had not. Claimant had been told

that he was going to get more customers but nothing had been confirmed yet. Claimant's dissatisfaction with his work environment is not a good-cause reason attributable to the employer according to Iowa law. As such, benefits must be denied.

DECISION:

The February 2, 2016, (reference 01) 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.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/pjs