

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL MCCLUSKEY

Claimant

**DIA APPEAL NO. 21IWDUI0083
IWD APPEAL NO. 20A-UI-07986**

PEPSI COLA BOTTLING COMPANY

Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC:5/10/20
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Michael McCluskey, claimant, filed a timely appeal from a June 24, 2020, (reference 02) unemployment insurance decision that denied unemployment benefits because McCluskey voluntarily quit work for personal reasons.

A telephone hearing was held September 3, 2020. The parties were properly notified of the hearing. McCluskey participated and was self-represented. Ann McCluskey was present but did not testify. Pepsi Cola Bottling Company (Pepsi) participated through representative Rhonda Wilkinson. McCluskey submitted the severance and release agreement, which was admitted into the record as Exhibit 1.

ISSUES:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Michael McCluskey began working at Pepsi in September 1978 as a full-time route delivery employee. He was taken off route delivery on December 17, 2019, following an accident. McCluskey was given the following employment options – he could take a job filling vending machines with a \$20,000/year decrease in pay; he could take a warehouse position; or he could take a severance package with the company. (McCluskey testimony.)

McCluskey accepted the vending machine job and filled vending machines at the lower rate of pay for one month. He found the job demeaning and decided to take the severance package. He signed the severance agreement on January 14, 2020, and received a lump-sum payment of approximately \$20,000. McCluskey believed taxes would be not be taken out of the payment, but

taxes were taken out. McCluskey acknowledged he was not terminated from Pepsi, but he quit under duress. (McCluskey testimony.)

Wilkinson is the office manager at Pepsi. She acknowledged McCluskey was offered a vending position at a lower pay rate, a warehouse position, or a severance package. Wilkinson and a Pepsi vice president were present when McCluskey signed the severance agreement. She added the severance agreement did not specify taxes would not be taken out of the lump-sum amount. Pepsi records show McCluskey was voluntarily terminated on January 17, 2020. (Wilkinson testimony.)

REASONING AND CONCLUSIONS OF LAW:

The June 24, 2020, (reference 02) unemployment insurance decision that found McCluskey ineligible for benefits is affirmed.

An individual is not eligible for benefits if the department finds the individual left work voluntarily without good cause attributable to the employer. Iowa Code § 96.5(1)(a). An individual is eligible for benefits if the quit is determined to be a voluntary quit with good cause attributable to the employer. Iowa Admin. Code r. 871-24.26. The following is classified as a quit with good cause attributable to the employer:

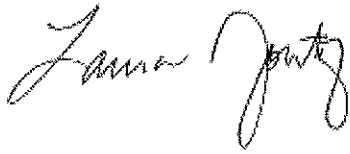
"(1) A change in the contract of hire The change of contract must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc."

A voluntary quit requires an intention to terminate the employment relationship accompanied by an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer Co.*, 289 N.W.2d 608, 612 (Iowa 1980). Claimant has the burden of proving the voluntary quit was for good cause attributable to the employer. Iowa Code § 96.6(2). An employee who accepts a job and performs work under known contractual changes is considered to have accepted the change in the contract of hire. See *Olson v. Emp't Appeal Bd.*, 460 N.W.2d 865 (Iowa Ct. App. 1990) (holding an employee who worked the job in question for seven months after a change in the contract of hire accepted the change and was not eligible for unemployment benefits).

I find McCluskey did not satisfy his burden of proving he voluntarily quit his job with good cause attributable to the employer. McCluskey accepted the vending position at the lower pay rate and worked in this position for one month. He quit because he found the job demeaning. Claimants who leave a job "because of dissatisfaction with the wages but [who] knew the rate of pay when hired" are not eligible for unemployment benefits. Iowa Admin. Code r. 871-24.25(13). In addition, claimants are not eligible for unemployment benefits if they leave "because of a dissatisfaction with the work environment." 871-24.25(21). McCluskey's misunderstanding of the tax implications of the severance agreement he signed with Pepsi does not result in eligibility for unemployment benefits. I find McCluskey quit without good cause attributable to the employer and is disqualified from receiving benefits.

DECISION:

The June 24, 2020, (reference 02) unemployment insurance decision is affirmed. Claimant voluntarily quit without good cause attributable to the employer. Claimant is ineligible for benefits.



Laura Jontz
Administrative Law Judge
Department of Inspections and Appeals
Administrative Hearings Division

September 8, 2020

Decision Dated and Mailed

LRJ:lb

CC: Michael McCluskey (by first class mail)
Pepsi Cola Bottling Company (by first class mail)
Nicole Merrill (email)
Joni Benson (email)

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 due to disqualifying separations, 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>.