

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PETER J SWANK
Claimant

CUPERTINO ELECTRIC INC
Employer

APPEAL 19A-UI-01060-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/30/18
Claimant: Appellant (4)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.25(20) – VQ – Compelling personal reasons > 10 days
Iowa Admin. Code r. 871-24.25(38) – VQ – Resignation caused discharge for notice period

STATEMENT OF THE CASE:

Peter Swank, Claimant, filed an appeal from the January 30, 2019 (reference 01) unemployment insurance decision that denied benefits because he voluntarily quit work with Cupertino Electric, Inc., Employer, for personal reasons not caused by employer. The parties were properly notified of the hearing. A telephone hearing was held on February 21, 2019 at 11:00 a.m. Claimant participated. Employer did not participate. Claimant's Exhibit A was admitted.

ISSUE:

Whether claimant's separation was a voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant was employed full-time as a journeyman electrician and foreman on a project in Iowa from October 30, 2017 until his employment with Cupertino Electric, Inc. ended on December 22, 2017.

On Thursday, December 7, 2017, claimant tendered his resignation to the general foreman effective Friday, December 29, 2017. Claimant resigned because he wanted to return to his home in California to be a caregiver for his significant other who was scheduled to have a hip replacement in January 2018. Claimant previously asked to be transferred to California where employer had active projects; but claimant's request to transfer was denied. On December 22, 2017, employer dismissed claimant from his employment – one week prior to claimant's resignation effective date. There was continuing work available to claimant on the Iowa project if he had not resigned. Claimant's job was not in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit his employment without good cause attributable to his employer and was discharged prior to his resignation effective date. Benefits are allowed from the date of separation to the proposed date of resignation provided claimant is otherwise eligible; benefits are denied thereafter.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. (emphasis added)

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.25(20), (38) provide:

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.

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

Claimant voluntarily quit his employment by tendering his resignation to the general foreman. Claimant's resignation shows his intention to end his employment relationship with employer and serves as an overt act of carrying out his intention. Claimant quit his job to be a caregiver for his significant other. While claimant's reason for quitting his employment is understandable – even admirable, it is not attributable to the employer. Claimant has not met his burden of proving good cause attributable to the employer.

Because claimant was discharged prior to the proposed date of resignation, claimant is not disqualified for benefits from his last day of work, December 22, 2017, until the proposed date of resignation, December 29, 2017. Claimant is disqualified for benefits from the effective date of his resignation, December 29, 2017, because he left his employment with Cupertino Electric, Inc. voluntarily and without good cause attributable to the employer.

DECISION:

The January 30, 2019, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant voluntarily left the employment without good cause attributable to the employer, but was discharged prior to the resignation effective date. Benefits are allowed from December 22, 2017 until December 29, 2017. Thereafter, benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times his weekly benefit amount.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs