

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**LEONARD L VANCIL**  
Claimant

**APPEAL 17A-UI-06743-DG-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNI-TEMP REFRIGERATION**  
Employer

**OC: 06/04/17  
Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 21, 2017, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 20, 2017. Claimant participated. Employer participated by Kristen Browning, Office Assistant.

**ISSUE:**

The issue in this matter is whether claimant quit for good cause attributable to employer?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 30, 2017. Claimant resigned from the employment on that date without providing advanced notice.

Claimant was experiencing respiratory problems that he believed was being exacerbated by his employment. Claimant believed that he had been exposed to ammonia which caused the respiratory distress.

Claimant sought medical attention from his provider. Claimant was told that he was having respiratory symptoms consistent with chronic obstructive pulmonary disease. Claimant was not advised by his physician to quit his employment.

Employer does sometimes engage in work where ammonia is used. Employer provides ventilator masks to employees to avoid exposure to those air born chemicals. Claimant did not believe the masks provided adequate protection from environmental agents because he was not issued a mask that was fitted for his face.

After considering his options claimant decided it was in his best interest to resign from the employment on May 30, 2017.

## REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he was concerned that his work was adversely affecting his health.

Iowa Code section 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(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.

Iowa Admin. Code r. 871-24.25(27) 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:

**(27)** The claimant left rather than perform the assigned work as instructed.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

Individuals who leave their employment due to disparate treatment are considered to have left work due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Dep't of Job Serv.*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

Claimant did not present evidence in writing to employer that a physician suggested leaving the employment, and he did not request any type of accommodation from employer. Claimant never requested another work assignment where he would not be exposed to air born irritants. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer. Benefits must be denied.

**DECISION:**

The decision of the representative dated June 21, 2017, (reference 01) is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/scn