

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TATE RATHJE**  
Claimant

**G M R I INC**  
Employer

**APPEAL 20A-UI-13145-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

Tate Rathje, the claimant/appellant, filed an appeal from the October 16, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 21, 2020. The claimant participated and testified. The employer did not participate. Official notice was taken of the administrative record.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer, doing business as Olive Garden, in September 2019. He worked as a full-time server. His last day of work was March 15, 2020.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic. On March 17, 2020 the employer closed because of the Governor's Proclamation of Disaster Emergency. The employer re-opened in on, or about, May 18, 2020. The employer contacted the claimant and asked him if he would return to work. The claimant chose not to return to work and resigned on May 22, 2020. The claimant resigned because of his concern about the pandemic and his concern about the pandemic's impact on his child, age 10, who has asthma.

The claimant received \$227.85 in emergency payment from the employer on April 1, 8 and 15, 2020.

The administrative record shows that the claimant received 1) \$3,228.00 in regular, state unemployment insurance (UI) benefits for the week ending March 21, 2020 through the week

ending May 23, 2020 and 2) \$4,800.00 in Federal Pandemic Unemployment Compensation (FPUC) for the weeks ending April 4, 2020 through the week ending May 23, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was voluntarily unemployed due to lack of work from March 17 through May 17 and voluntarily quit without good cause attributable to the employer on May 22.

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(37) 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:

...

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

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). 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 employer laid the claimant off for lack of work on March 17 through May 17. When an employer suspends a claimant from work status, the separation does not prejudice the claimant. The claimant's separation was attributable to a lack of work by the employer. Benefits are allowed for March 17 through May 17, provided the claimant is otherwise eligible.

The employer then offered the claimant work again and the claimant resigned on May 22. The claimant's concern about the pandemic and its impact on his child who has an underlying condition is entirely reasonable and understandable. However, the claimant's quitting was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied effective May 22.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136 for the time when he is not eligible for regular benefits. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount under a different federally funded unemployment insurance benefits program called the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

**DECISION:**

The October 16, 2020, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant was voluntarily unemployed due to lack of work from March 17 through May 17. Benefits are allowed during the period. The claimant voluntarily quit without good cause attributable to the employer on May 22. Benefits are denied effective May 22, 2020.

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**



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Daniel Zeno  
Administrative Law Judge

January 8, 2021  
Decision Dated and Mailed

dz/scn