

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW M CRAWFORD
Claimant

FBG SERVICE CORPORATION
Employer

APPEAL 20A-UI-11677-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/05/20
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On September 17, 2020, Matthew M. Crawford (claimant) filed an appeal from the September 15, 2020, reference 02, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with FBG Service Corporation (employer) and failed to provide evidence that he left with good cause attributable to the employer. The parties were properly notified about the hearing held by telephone on November 10, 2020. The claimant participated, and he was represented by Leonard Bates and Danya Keller, Attorneys. The employer participated through Andrea Jordan, Internal Manager, and it was represented by Thomas Kuiper, Hearing Representative from Equifax. No exhibits were offered into the record. The administrative law judge took official notice of the administrative record, specifically the fact-finding documents.

ISSUE:

Did the claimant voluntarily quit employment with good cause attributable to the employer or did the employer discharge the claimant for job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Cleaner Specialist beginning on November 14, 2019, and his last day worked was June 11, 2020. The employer has a drug testing policy, which the claimant had been given. The policy states refusal to take a drug test is a terminable offense.

About a month before his last day worked, the claimant reported to Larry East, Operations Supervisor, that his co-worker David was making racist and offensive comments. East spoke with David and suspended him.

On June 11, the security personnel, who worked for the client where the claimant was assigned, reported to the employer that the claimant smelled of marijuana. Rosa Jurado, Site Supervisor, and Mark Gunhus, Jurado's supervisor, met with the claimant and asked him to take a drug test. The claimant agreed to the drug test but said he was quitting after that as he believed the report

of drug use came from David and was retaliation for the earlier incident. Gunhus called Andrea Jordan, Internal Manager, to ask her what to do as the claimant said he was quitting anyway. Jordan, who did not know about the issue with David, advised that if the claimant was quitting that they did not need to do the drug test. Gunhus then collected the employer's property that the claimant had in his possession and the claimant left.

Later that day, the claimant spoke with a Human Resources representative, who offered him the opportunity to take the drug test. Jordan sent the claimant the authorization paperwork to go take the drug test. The claimant did not take the drug test and did not return to work.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5 provides, in relevant part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

...

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.25 provides, in relevant part:

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.

...

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

(28) The claimant left after being reprimanded.

Iowa Admin. Code r. 871-24.26(3) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(3) The claimant left due to unlawful working conditions.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of

events. When viewing the administrative records, the employer's version of events has remained more consistent than the claimant's version of events.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left his employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It 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).

The employer has met the burden of proof to establish that the claimant voluntarily left employment. He expressed an intention while speaking with Gunhus and Jurado. He then returned the employer's property and did not report for the drug test when given another opportunity, thereby, ending his employment.

The 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). The claimant's contention that he left employment due to unlawful retaliation is not persuasive based on the current record. The claimant had a belief that David was involved in the final action; however, he had no objective information that indicated David was actually involved in the report of drug use. Additionally, the decision maker regarding the drug test, Jordan, was not aware of the protected activity in which the claimant engaged. The claimant's decision to leave due to a dislike of the work environment is not for good cause attributable to the employer. Accordingly, benefits are denied.

In the alternative, even if the claimant had been discharged, benefits would still be denied. The employer has a drug testing policy that states refusal to take a drug test is considered a terminable offense. The employer has an interest in maintaining a drug-free work environment. The claimant's refusal to report for the drug test later that day is a deliberate disregard of the employer's interests.

DECISION:

The September 15, 2020, reference 02, unemployment insurance decision is affirmed. The 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.



Stephanie R. Callahan
Administrative Law Judge

December 3, 2020
Decision Dated and Mailed

src/scn

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, 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.