

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARTY CORNELIUS

Claimant

WITHAM AUTO CENTER

Employer

APPEAL 20A-UI-12669-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/28/20

Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Protest

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On October 13, 2020, claimant filed an appeal from the October 2, 2020, reference 02, unemployment insurance decision that concluded he was not eligible for unemployment insurance benefits because claimant voluntarily quit. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for December 2, 2020, at 11:00 a.m. Claimant participated. The employer participated through Sales Manager Kevin McCullough.

ISSUE:

Should the appeal be dismissed based on the appellant's failure to appear and participate?
Was claimant discharged for willful misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

Claimant worked as a full time sales associate for the employer from July 2012 to May 27, 2020. His immediate supervisor was Store Manager Cody Shilling.

On April 20, 2020, Claimant bought masks for his fellow employees, Kyle Jones and Robert Seaver, because they had to talk to people from a variety of different areas regarding potential sales. Claimant also provided a mask to Cody Shilling, but he rejected the offer because he already bought a mask.

From April 20, 2020 to May 12, 2020, Claimant also expressed frustration with the employer's response to Covid19 with Cody Shilling. In particular, the employer did not provide masks to the incoming clients and the sales associates they were speaking with. There was not enough room for social distancing and there were not barriers at the sales associate's desks. The employer merely provided pens for clients. Cody Shilling was empathetic but beyond buying cleaning supplies and cleaning areas, he was at a loss about how to mitigate the spread in the

office. In particular, sales associates had to share a very small area of space when they showed clients vehicles they were interested in.

On May 12, 2020, Claimant submitted his resignation by text message to Cody Shilling. Claimant wrote, "As much as I'd like to say this in person, I don't feel the need to Kevin [McCullough's] condescending negativity." Claimant stated his appreciation for the work relationship that he had with Cody Shilling, Kyle Jones and Robert Seaver. He said that he had to take this new opportunity or he would regret it. Claimant did not have a position with another employer when he sent this text message. The employer would have had work available for claimant had he not resigned.

Neither claimant nor anyone in his immediate household has tested positive for Covid19 since he resigned from the employer. Claimant had symptoms similar to Covid19 on two different occasions, but he received negative test results each time.

On October 2, 2020, a representative issued a decision, reference 01, which held claimant ineligible for unemployment insurance benefits. The decision states it would become final unless an appeal was post marked by October 12, 2020, or received by the Appeals Section on that date.

Claimant first attempted to mail his appeal to the Appeals Section on October 10, 2020, but it was returned to him. The claimant's appeal was sent through an IowaWORKS fax machine at 4:36 p.m. on October 13, 2020. Claimant said he could not use the fax machine on October 12, 2020 because the IowaWORKS center had been closed for observance of Columbus Day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant filed his appeal within the extended period for the observation of holidays. The administrative law judge finds claimant voluntarily quit without good cause attributable to the employer.

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days. However, this period is extended if the day in which the appeal is to be submitted falls on a holiday. Since the claimant's appeal was due on Columbus Day, October 12, 2020, it was tolled until the next day and is timely. In that context, the analysis will proceed to the question of whether claimant voluntarily quit with good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

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. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

Iowa Admin. Code r. 871-24.28(5) provides:

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:

(3) The claimant left to seek other employment but did not secure employment.

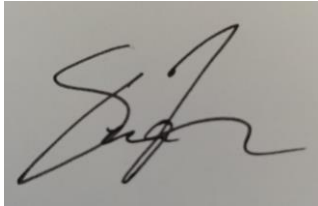
The evidence in the record indicates that claimant sent his resignation to Cody Shilling on May 12, 2020. In his resignation, claimant stated he had accepted a job with another employer. Claimant did not have a job offer from another employer. Because claimant's resignation expresses a desire to seek other employment but he did not obtain secure employment, his resignation is presumed to be without good cause attributable to the employer.

Claimant claims his working conditions were intolerable due to the employer's insufficient mitigation strategies. However, claimant acknowledged his fellow employees were allowed to buy and use their own masks for mitigation efforts. To the extent that the employer's mitigation plans were unsatisfactory, they are short of the intolerable working conditions which would constitute good cause attributable to the employer.

Claimant voluntarily quit the employment without good cause attributable to the employer. Accordingly, claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to claimant.

DECISION:

The October 2, 2020, reference 02, unemployment insurance decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

December 31, 2020
Decision Dated and Mailed

smn/mh