

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENNIS R. SHEPPARD

Claimant

APPEAL 20A-UI-11024-BH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND ASPHALT, INC.

Employer

OC: 11/11/18

Claimant: Appellant (1)

Iowa Code section 96.5(1) – Voluntary Quit

Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause Attributable to the Employer

Iowa Administrative Code rule 871-24.26 – Voluntary Quit With Good Cause Attributable to the Employer

STATEMENT OF THE CASE:

The claimant, Dennis R. Sheppard, appealed the September 4, 2020 (reference 03) unemployment insurance decision that denied benefits based upon a finding Sheppard voluntarily quit his job with Heartland Asphalt, Inc. (Heartland) without good cause attributable to the employer. The agency properly notified the parties of the appeal and hearing.

The undersigned presided over a telephone hearing on October 27, 2020. Sheppard participated personally and testified. Heartland participated through human resources and safety director Chris Nitzschke, who testified.

ISSUES:

Was Sheppard's separation from employment with Heartland 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 undersigned finds the following facts.

Heartland hired Sheppard in or around May of 2018. He worked there full time as a laborer before becoming a truck driver the week before he quit. On or about July 7, 2020, Sheppard voluntarily resigned from his employment with Heartland.

Sheppard was having issues with a supervisor harassing him. He called the owner of the company. The two agreed to change Sheppard's position from laborer to truck driver and that he would not work with the supervisor any longer. Sheppard's pay remained the same.

Generally, the job duties of a truck driver are not as strenuous as those of a laborer. But in the Heartland job description for driver, the duties include laborer duties. This is because Heartland sometimes needs a driver to perform laborer work on a job assignment.

After primarily operating equipment during his first week as a truck driver, Heartland assigned Sheppard laborer duties. Sheppard interpreted this as a demotion. However, Heartland needed Sheppard, as a truck driver, to perform laborer duties on the job he was working. The change in duties did not reflect a permanent change in position. Further, Sheppard's pay remained the same.

Sheppard sent a text message to Heartland's owner, informing him that he was resigning because he had been assigned laborer job duties. The owner replied by telling Sheppard that he thought Sheppard was making a mistake and wishing him luck.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Sheppard voluntarily left employment with Heartland without good cause attributable to the employer under the Iowa Employment Security Law, Iowa Code chapter 96.

Iowa Code section 96.5(1) disqualifies a claimant from benefits if the claimant quit she job without good cause attributable to the employer. The Iowa Supreme Court has held that good cause requires "real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). Moreover, the court has advised that "common sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

According to the Iowa Supreme Court, good cause attributable to the employer does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *E.g. Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787, 788 (Iowa 1956).

A burden-shifting framework is used to evaluate quit cases. Because an employer may not know why a claimant quit, the claimant has the initial burden to produce evidence suggesting the claimant is not disqualified from benefits under Iowa Code section 96.5(1) *a* through *j* and section 96.10. If the claimant produces such evidence, the employer has the burden to prove the claimant is disqualified from benefits under section 96.5(1).

Iowa Administrative Code rule 871-24.25 creates a presumption a claimant quit without good cause attributable to the employer in certain circumstances. Iowa Administrative Code rule 871-24.26 identifies reasons for quitting that are considered for good cause attributable to the employer. Rule 871-24.26(1) states:

An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

If a change in the work environment does not rise to the level of a substantial change, rule 871-24.25(21) applies. It provides that a claimant is presumed to have quit without good cause attributable to the employer if the claimant leaves employment due to dissatisfaction with the work environment.

Here, the evidence shows that Heartland changed Sheppard's job from laborer to driver. The job duties of a driver include laborer duties due to the nature of the jobs Heartland assigns its workers and the need to have flexibility among its workforce to meet the needs of those jobs. Heartland did not change Sheppard's job from driver back to laborer. Rather, it asked Sheppard to perform laborer duties on a job because of need. Sheppard balked at the request and quit because of it.

The evidence in this appeal establishes it is more likely than not that Heartland did not significantly change Sheppard's job duties or wages. The request to perform laborer job duties was not a change in Sheppard's contract for hire. Consequently, Sheppard quit because he was dissatisfied with being directed to perform laborer duties despite his recent change to the position of driver. This amounts to mere dissatisfaction with the work environment.

For these reasons, the evidence establishes that Heartland did not change Sheppard's contract for hire, so rule 871-24.26(1) does not govern. Rather, Sheppard quit because he disliked the request to perform laborer duties, which are part of the driver's job description, on a temporary basis for the job Heartland had assigned him to work. Sheppard therefore quit without good cause attributable to the employer under Iowa Code section 96.5(1) and rule 871-24.25(21). Benefits are denied.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The September 4, 2020 (reference 03) unemployment insurance decision is affirmed. Sheppard voluntarily left employment without good cause attributable to Heartland. Benefits are withheld until such time as Sheppard has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though Sheppard is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. 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 (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if Sheppard is eligible for such compensation for the week claimed.

This decision does not address whether Sheppard is eligible for PUA. For a decision on such eligibility, Sheppard must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

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 about PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>

- To apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-application>

A handwritten signature in black ink, appearing to read "Ben Humphrey", with a stylized flourish extending from the end.

Ben Humphrey
Administrative Law Judge

October 28, 2020
Decision Dated and Mailed

bh/scn