

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DARWYN B SCHEFFERT
Claimant

KWIK TRIP INC
Employer

APPEAL 17A-UI-02001-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/28/16
Claimant: Appellant (4-R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.27 – Voluntary Quitting Part-time Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 17, 2017, (reference 05) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 21, 2017. Claimant participated. Employer participated through store leader Theresa Lang. Official notice was taken of the administrative record of claimant's wage and benefit payment histories, with no objection.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a guest service coworker from October 31, 2016, and was separated from employment on January 19, 2017, when he quit.

January 16, 2017 was the last day claimant worked for the employer. Claimant was next scheduled to work on January 19, 2017 at 1:00 p.m. Claimant did not show up to work his scheduled shift on January 19, 2017. When claimant did not show up for work, Ms. Lang attempted to call him at his house and his other employer, but she was unsuccessful. Eventually Ms. Lang and claimant spoke on the phone. Claimant told Ms. Lang that he was not coming into work because he had personal issues. Claimant did not tell Ms. Lang what his personal issues were. Ms. Lang asked claimant if he was not coming to work on January 19, 2017 or if he was done. Claimant told Ms. Lange that he was done and he was not coming to work anymore.

Claimant testified he has anxiety and panic attacks. Claimant did not tell the employer he had anxiety or panic attacks. Claimant did not ask for an accommodation from the employer. Claimant was not advised by a physician to quit his employment.

Claimant testified that one of the personal issues was an employee that barely spoke to him and talked about him behind his back. Claimant was not aware of what the employee would say about him, but he could tell the employee was talking about him. Claimant did not report the employee or the issue to the employer.

Claimant testified another personal issue was that employees would not follow instructions. Claimant testified he was instructed to perform his job duties a certain way and he would follow those instructions. However, claimant testified other employees would not follow the instructions. Claimant did not report the issue to the employer. Ms. Lang testified had claimant reported the issue, she would have addressed the issue.

Claimant also testified that one of the personal issues was a coworker not allowing him in the kitchen until the coworker left at 8:00 p.m. Claimant never reported this issue to the employer.

The administrative record reflects that claimant has not requalified for benefits and had other base period wages but the record is unclear as to whether he is otherwise monetarily eligible.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit this part-time employment without good cause attributable to the employer, but has not requalified and the record is unclear as to whether claimant is otherwise monetarily eligible after removal of these wage credits.

Iowa Code §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 Code § 96.5(1)g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was 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. 871-24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and

the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1)g.

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. 871-24.25(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.

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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. On January 19, 2017, claimant quit his employment without any notice to the employer. When Ms. Lang finally spoke to claimant about whether he was going to continue to work for the employer, he told the employer he quit for personal reasons. Claimant never told the employer what the personal reasons were and he did not inform the employer about any of the issues that lead him to quit. The employer was not aware claimant's personal issues. Furthermore, claimant never requested an accommodation or informed the employer about his anxiety and panic attacks. 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 according to Iowa law.

Inasmuch as claimant voluntarily quit his employment without a good-cause reason attributable to the employer, the separation is disqualifying. Claimant has not requalified for benefits since the separation but may be otherwise monetarily eligible according to base period wages.

DECISION:

The February 17, 2017, (reference 05) unemployment insurance decision is modified in favor of the appellant. Claimant voluntarily left the part-time employment without good cause attributable to the employer and has not requalified for benefits but may be otherwise monetarily eligible. Benefits are allowed, provided claimant is otherwise eligible. The employer's account (KWIK TRIP INC, employer account number 116702-000) shall not be charged.

REMAND: Claimant's monetary eligibility after the quit of this part-time employment (KWIK TRIP INC, employer account number 116702-000) as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

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