

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIM D KANE
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 22A-UI-08126-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/27/22
Claimant: Appellant (3)**

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

STATEMENT OF THE CASE:

On March 30, 2022, Tim Kane (claimant/appellant) filed a timely appeal from the Iowa Workforce Development (“IWD”) decision dated March 24, 2022 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that he voluntarily quit work on January 18, 2022 for personal reasons.

A telephone hearing was held on May 13, 2022. The parties were properly notified of the hearing. Appeal Nos. 22A-UI-08874-AD-T, 22A-UI-08126-AD-T, and 22A-UI-08127-AD-T are related and were heard together, forming a single record. The claimant participated personally. Claimant’s mother, Sarah Kane, observed the hearing. Whirlpool Corporation (employer/respondent) did not appear or participate. No exhibits were offered or admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant’s first day of employment was in July 2017. Claimant worked for employer most recently as a full-time plant utility worker. The last day claimant was present at the job and performing work was January 10, 2022. Claimant left at that time because he was not feeling well. He notified employer that he was leaving at that time due to illness. Claimant was unable to return to work after that. Shortly thereafter claimant was diagnosed with acute heart failure. Claimant’s doctor has not subsequently released him to return to work at employer. Claimant has not resigned or been formally terminated by employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated March 24, 2022 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that he voluntarily quit work on January 18, 2022 for personal reasons is MODIFIED in favor of respondent.

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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- a. Obtain the advice of a licensed and practicing physician;
- b. Obtain certification of release for work from a licensed and practicing physician;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- d. Fully recover so that the claimant could perform all of the duties of the job.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

“Good cause” for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

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. 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). 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).

Employer has carried its burden of proving claimant’s departure from employment was voluntary. However, claimant has not carried his burden of proving the voluntary leaving was for good cause attributable to employer. Claimant voluntarily left employment due to illness. The illness was not employment related and so the leaving was not for good cause attributable to employer. Claimant has not subsequently been released to return to work, returned to employer to offer his services, and been informed that work was unavailable. The separation from employment was therefore disqualifying.

DECISION:

The decision dated March 24, 2022 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that he voluntarily quit work on January 18, 2022 for personal reasons is MODIFIED in favor of respondent. The separation was disqualifying. Benefits must be denied, and employer's account shall not be charged.

Claimant voluntarily left employment on January 10, 2022 rather than voluntarily quitting work on January 18, 2022. Claimant is therefore disqualified from benefits effective with the week ending January 15, 2022. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
Administrative Law Judge

May 17, 2022
Decision Dated and Mailed

abd/abd