

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CLINT BARTHELMES**

Claimant

**ALLEN ROOFING AND CONSTRUCTION**

Employer

**APPEAL 20A-UI-06919-HP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/08/19**

**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2) – Discharge Due to Misconduct

**STATEMENT OF THE CASE:**

Claimant Clint Barthelmes filed an appeal from a June 19, 2020 (reference 02) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer, Allen Roofing and Construction (“Allen Roofing”). Notices of hearing were mailed to the parties’ last known addresses of record for a telephone hearing scheduled for July 31, 2020. Barthelmes appeared and testified. Tyler Buchheit testified on Barthelmes’s behalf. Nathan Trappe appeared and testified on behalf of Allen Roofing. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

**FINDINGS OF FACT:**

Barthelmes commenced full-time employment as a laborer with Allen Roofing on December 10, 2018. His immediate supervisor was Ryan Johnson, the sales and project manager for Allen Roofing. Trappe is the president and owner of Allen Roofing. Allen Roofing is a roofing business. Allen Roofing has one roofing crew. The foreman Barthelmes reported to on the job was Nick Kirby.

On April 20, 2020, Barthelmes told Kirby he was quitting because he did not want to be exposed to asbestos and he was fed up with working for Allen Roofing. Barthelmes testified Kirby told him he needed to do what he needed to for himself.

Barthelmes left the job site. He spoke with Trappe that day. Barthelmes handed Trappe a bag of roofing material and told him he thought it contained asbestos. Barthelmes told Trappe he did not think he should have to work with asbestos and that he is not certified to work with asbestos. Barthelmes testified Trappe responded the respirators are not under lock and key. Barthelmes acknowledged he had access to respirators in the shop and that he did not take any respirators with him to the work site.

Buchheit also worked for Allen Roofing with Barthelmes. Buchheit resigned around April 18, 2020 and he started a new job on April 21, 2020. Buchheit testified Trappe was a crooked boss that just cared about making money and not about his employees. Buchheit is certified to abate asbestos. He reported Allen Roofing did not provide the employees with access to respirators, air sample monitors, flags, or showers for showering in and out on the site of projects containing asbestos. Respirators were available in the shop on a daily basis, but were not stocked on the job site. Buchheit acknowledged he had the cellular telephone numbers for Johnson and Trappe and that he could have called them to bring equipment to the site.

Trappe testified that before April 20, 2020, Barthelmes never complained to him about not being certified in asbestos or having proper equipment. Trappe provided the roofing crew with a truck and trailer for the tools to drive to worksites. Allen Roofing has a tub for asbestos abatement that contains an air monitor, harnesses, suits, and respirators. Trappe reported the tub will fit in the roofing truck and trailer. Allen Roofing has respirators available to all of its employees.

Trappe testified he kept notes of his meeting with Barthelmes on April 20, 2020. Trappe reported Barthelmes came back to the shop from the job site in Cresco around 1:30 p.m. on April 20, 2020. Barthelmes handed Trappe a bag of roofing debris, sat down in his office, and said he could not “do this anymore,” and quit. Trappe asked about the roofing material and Barthelmes replied he believed the material contained asbestos and that he did not have a respirator to wear while tearing off the roof. Trappe responded Allen Roofing had respirators and everything else to do the job safely and that if Barthelmes had forgot any protective equipment, he could call at any time and someone could have brought out the respirators.

Trappe reported he had the state of Iowa test the material Barthelmes handed him. It did not contain asbestos. Trappe called Barthelmes and told him the material did not contain asbestos.

Trappe testified several years ago he had the roofing crew certified to abate asbestos. Barthelmes was not working for Allen Roofing at that time. An employee has to attend a week-long course to obtain the initial certification. Each year the employees attend another course that is a couple of hours to be recertified. Trappe had decided not to perform asbestos jobs because Allen Roofing was not doing enough abatement work to continue the training or to have any new employees trained. Trappe reported in the past three years Allen Roofing has done two or three asbestos projects and he subs out that work now.

Trappe reported when Johnson bids a project, he takes a core sample of the roof and he visually inspects the roof to determine whether he believes it contains asbestos. Trappe testified most roofing materials are nonfriable as opposed to friable. Nonfriable roofing material does not require any asbestos gear. Trappe denied knowing Barthelmes had worked on an actual roof containing asbestos.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(1) provides an individual “shall be disqualified for benefits, regardless of the source of the individual’s wage credits: . . . If the individual has left work voluntarily without good cause attributable to the individual’s employer, if so found by the department.” The Iowa Supreme Court has held a “voluntary quit” means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer.” *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires “an intention to terminate the employment relationship accompanied by an overt act carrying out the intent.” *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). “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).

871 Iowa Administrative Code 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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer: . . . .

**24.25(21)** The claimant left because of dissatisfaction with the work environment.

871 Iowa Administrative Code 24.26(2), (3), and (4) provide:

**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:

**24.26(2)** The claimant left due to unsafe working conditions.

**24.26(3)** The claimant left due to unlawful working conditions.

**24.26(4)** The claimant left due to intolerable or detrimental working conditions.

If the claimant establishes the claimant left due to intolerable or detrimental working conditions, benefits are allowed. Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. The Iowa Administrative Code was amended in 1995 to include an intent-to-quit requirement. The requirement was only added, however, to 871 Iowa Administrative Code 24.26(6)(b), the provision involving work-related health problems. No intent-to-quit requirement was added to 871 Iowa Administrative Code 24.26(4), the intolerable working conditions provision. The Iowa Supreme Court concluded that, because the intent-to-quit requirement was added to 871 Iowa Administrative Code 24.26(6)(b) but not 871 Iowa Administrative Code 24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

“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 attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith”); *Shontz v. Iowa Emp't Sec. Comm'n*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer “free from fault”); *Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787, 788 (Iowa 1956) (“good cause attributable to the employer need not be based upon a fault or wrong of such employer”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, the claimant is not required to give the employer any notice with regard to the alleged intolerable or detrimental working conditions prior to quitting. However, the claimant must prove the claimant’s working conditions were intolerable or detrimental.

Barthelmes testified he quit because he was not certified to perform asbestos abatement and he was required to abate asbestos, which is illegal, and because Allen Roofing did not provide him with proper equipment for abating asbestos. Barthelmes did not provide proof at hearing he actually worked with asbestos material or that Allen Roofing required him to break the law to work with asbestos without a certification. I do not find Allen Roofing required Barthelmes to work in unlawful conditions. Barthelmes had access to protective equipment in the shop and could have brought that equipment to every job site in the work truck and trailer supplied by Allen Roofing. As acknowledged by Trappe, roofing work can be dirty and jobs can be challenging. I do not find Barthelmes has established the working conditions at Allen Roofing were unsafe, intolerable and detrimental and rose to the level where a reasonable person would feel compelled to quit and do not constitute a good cause reason attributable to Allen Roofing for Barthelmes to have quit. Benefits are denied.

## **DECISION:**

### **Regular Unemployment Insurance Benefits Under State Law**

The June 19, 2020 (reference 02) unemployment insurance decision denying unemployment insurance benefits is affirmed. Claimant voluntarily quit his employment with the employer on April 20, 2020. Unemployment insurance benefits are denied until the claimant has worked in and earned wages for insured work equal to ten times the claimant's weekly benefit amount after the claimant's separation date, and provided the claimant is otherwise eligible.

### **Pandemic Unemployment Assistance ("PUA") Under the Federal CARES Act**

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, the claimant 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 may provide up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive an additional \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation ("FPUC") program if the individual is eligible for PUA benefits for the week claimed. The FPUC additional \$600 payment per week ends as of July 25th in Iowa. This means the \$600 weekly additional benefit will stop and at this time, no extension or change to the program has been made by Congress at this time. This does mean that you will see a corresponding decrease in your weekly benefit amount. The FPUC payments are not a state benefit and Iowa is unable to make any changes to the availability of this benefit. If a change takes place to this benefit in the future, IWD will share on the IWD website and social media. This decision does not address whether the claimant is eligible for PUA. If the claimant wishes to receive PUA benefits, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below:

**Note to Claimant:** If this decision determines you are not eligible for regular unemployment insurance benefits and 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>.** This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.



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August 6, 2020  
Decision Dated and Mailed

hlp/scn