

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBERT MOSLEY
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 21A-UI-16140-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/18/21
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On July 21, 2021, Robert Mosley (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated July 15, 2021 (reference 01) that denied unemployment insurance benefits based on a finding that claimant voluntarily left employment on April 5, 2021 without good cause attributable to employer.

A telephone hearing was held on September 14, 2021. The parties were properly notified of the hearing. The claimant participated personally. Theresa Sago participated as a witness. Express Services Inc. (employer/respondent) did not register a number for the hearing or participate. 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:

Claimant began working for employer on or about April 3, 2017. The most recent day claimant performed work for employer was December 6, 2020. Claimant left employment at that time because he was hired for a full-time position elsewhere. Claimant performed work in that new position. Claimant has not since performed work for employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated July 15, 2021 (reference 01) that denied unemployment insurance benefits based on a finding that claimant voluntarily left employment on April 5, 2021 without good cause attributable to employer is REVERSED.

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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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)).

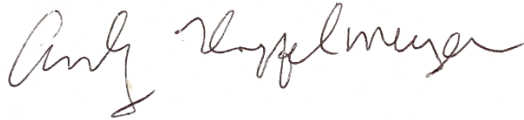
"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to 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).

Claimant resigned to accept work elsewhere. He did then perform work in that new position. As such, claimant's separation from employment was not disqualifying and employer's account shall not be charged. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible.

DECISION:

The decision dated July 15, 2021 (reference 01) that denied unemployment insurance benefits based on a finding that claimant voluntarily left employment on April 5, 2021 without good cause attributable to employer is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account is not subject to charge.



Andrew B. Duffelmeyer
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September 21, 2021
Decision Dated and Mailed

abd/scn