

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**JEFFREY M GONZALEZ**  
Claimant

**TRUGREEN LP**  
Employer

**APPEAL 17A-UI-09977-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/20/17**  
**Claimant: Appellant (1)**

---

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Admin. Code r. 871-24.25(19) – Quit to Become Self-Employed  
Iowa Admin. Code r. 871-24.25(29) – Quit in Anticipation of Layoff

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 20, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit to become self-employed. The parties were properly notified of the hearing. A telephone hearing was held on October 16, 2017. The claimant, Jeffrey M. Gonzalez, participated. The employer, Trugreen, L.P., participated through Anthony Overbeck, Branch Sales Manager; and Matthew Walker, General Manager; and Barbara Buss of ADP represented the employer.

**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 full time, most recently as a residential outdoor sales representative, from March 2017 until July 28, 2017, when he quit his employment. In June 2017, claimant began speaking with someone about starting a business dealing with the energy industry. Claimant notified his employer that he wanted to pursue this opportunity, and the employer arranged for him to end employment at the end of July. Continued work was available, had claimant not ended his employment. The employer commenced its seasonal layoffs in October 2017, and it is still in the process of laying off employees and finishing the lawn care season.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's separation from employment was without good cause attributable to the employer.

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 Admin. Code r. 871-24.1 provides:

Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. *Layoffs*. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Iowa Admin. Code r. 871-24.25 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: ...

(19) The claimant left to enter self-employment.

...

(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance,

conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's testimony more credible than claimant's testimony. Claimant had extensive experience with this employer, and the administrative law judge does not believe that claimant actually thought he could be laid off for the season at the end of July. The administrative law judge believes claimant worked with the employer to identify a departure date for him that would not be too difficult for the employer to accommodate. However, this is not the same as being laid off at the end of the season.

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). Claimant left his employment to pursue an opportunity in self-employment. Even if he initially believed that he was the beneficiary of an incredibly early layoff, the employer told him that the system would not let it lay him off that early and presented an opportunity for him to continue his employment rather than quit. Claimant chose to quit. His decision to leave employment was not for a good cause reason attributable to the employer. 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 told the employer he was leaving for a new employment opportunity. While he may have had good personal reasons for ending his employment, he did not leave for a good cause reason fairly attributable to the employer. Benefits are withheld.

**DECISION:**

The September 20, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

---

Elizabeth A. Johnson  
Administrative Law Judge

---

Decision Dated and Mailed

lj/scn