

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WYATT T BLACKETER
Claimant

DLJ INC
Employer

APPEAL 20A-UI-03335-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (2R)

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

STATEMENT OF THE CASE:

On April 21, 2020, Wyatt Blacketer (claimant/appellant) filed a timely appeal from the April 13, 2020 (reference 01) unemployment insurance decision that found he was not eligible for benefits.

A telephone hearing was held on May 13, 2020. The parties were properly notified of the hearing. The claimant participated personally and with witness Joel Blacketer. DLJ Inc (employer/respondent) participated by owner Dale Bucher. Official notice was taken of the administrative record.

ISSUE(S):

Was the separation 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 worked for employer part-time as a clerk at the front counter and sometimes in the kitchen as a cook. The business is a pizza restaurant. Claimant worked for employer from October 2016 until December 2018 and then again from December 2019 to February 29, 2020. The last day claimant worked on the job was February 29, 2020. Claimant's immediate supervisor was Bucher. Claimant separated from employment in mid-March 2020. Claimant quit at that time.

Claimant resigned due to ongoing medical issues and concern that he was being particularly susceptible to COVID-19 due to those medical issues. Claimant was ill for much of 2019 due to an undiagnosed infection, heart arrhythmia, and an auto-immune disorder. Claimant lost significant weight during that time and was still feeling poorly when he was hospitalized again in late February.

Upon being released from the hospital about two weeks later, claimant informed Bucher he did not feel he could return to work due to his ongoing health issues. A physician had not recommended prior to claimant's quitting that he no longer work. Claimant did not inquire with

Bucher as to a leave of absence, as he was unsure how long he would have to be out due to the pandemic. Bucher told claimant there would always be work available there for him when he was ready to return.

Claimant did not specifically inform Bucher that he was quitting largely due to the pandemic. Claimant simply informed Bucher he could not return to work because he needed to concentrate on getting better. However, claimant's father had asked him not to return to work due to the pandemic, and that was his primary reason for quitting.

In his position at employer, claimant was frequently interacting with customers and operating the cash register. Claimant felt it was unsafe for him to frequently interact with customers during the pandemic, particularly due to his pre-existing health conditions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the April 13, 2020 (reference 01) unemployment insurance decision that found claimant not eligible for benefits is REVERSED. Claimant is eligible for benefits, provided he meets all other eligibility requirements.

Iowa Code section 96.5(1)a 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.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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:

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

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

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. Claimant has further carried his burden of proving the voluntary leaving was for good cause attributable to employer.

The administrative law judge finds claimant's quitting was due to COVID-19. A reasonable person would find claimant's leaving of employment to be reasonable, given his weakened immune system and pre-existing conditions; the COVID-19 pandemic; and the necessity that he be frequently interacting with customers in his position. While claimant would have been well-served to seek the advice of a physician and explore with Bucher whether accommodations could be made to continue his employment in a safe way, it seems highly unlikely given the nature of the business and claimant's conditions that such an accommodation could have been made. For these reasons, the administrative law judge finds claimant's quitting was with good cause, as the working conditions were unsafe, intolerable, and detrimental to claimant. Benefits are therefore allowed.

At this time, Iowa Workforce Development (IWD) is not charging employers for claims made by their employees due to COVID-19-related unemployment. IWD has established a trigger for the balance of the Unemployment Insurance Trust Fund, at which point it will begin to charge employers accounts for respective unemployment claims. The trigger has been established at \$950M. This decision was made to assist with the recovery by minimizing any increases employers may face in the unemployment tax rate, which is based in large part on the trust fund balance. CARES Act claims for the self-employed and the \$600 weekly benefit will not be paid from the trust fund.¹

¹ See *Update and Resources about COVID-19*, Iowa Workforce Development, available at <https://www.iowaworkforcedevelopment.gov/COVID-19#ife> (last accessed May 8, 2020).

DECISION:

The April 13, 2020 (reference 01) unemployment insurance decision that determined claimant was ineligible to receive unemployment insurance benefits is REVERSED. Claimant is eligible for benefits, as his separation from employment was due to COVID-19.

REMAND:

The issue of chargeability of benefits is REMANDED to the Benefits Bureau of IWD for issuance of a decision consistent with the findings here and the Department's guidance on the chargeability of employers in these circumstances.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

May 19, 2020
Decision Dated and Mailed

abd/mh