

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TONY J CRISS
Claimant

PARCO LTD
Employer

APPEAL 21A-UI-02917-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/30/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 8, 2021, (reference 02) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on March 12, 2021. Claimant Sony J. Criss participated and testified. Mindy Swift testified on behalf of claimant. Employer Parco Ltd. participated through human resources manager Juliet Diaz.

ISSUE:

Did claimant voluntarily quit the employment without 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 as a full-time crew chief from July 22, 2019, until January 19, 2020, when he quit.

On January 8, 2020, employer spoke to claimant about Facebook posts he made in violation of its social media policies. Claimant was a no call/no show for his scheduled shifts on January 9, 10, and 12, 2020. He did not go into work because his girlfriend Mindy Swift was fired by employer that week and he was upset about her discharge as well as the issues surrounding his Facebook posts. On January 13, 2020, human resources manager Juliet Diaz spoke to Swift about her employment and asked her if claimant would be returning to work. Swift told Diaz claimant would not return to work.

Employer considered claimant to have voluntarily quit when he did not notify employer or work any of his shifts on the schedule through January 19, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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. 871-24.25 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:

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

The decision in this case rests, at least in part, on the credibility of the witnesses. 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, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds employer's version of events to be more credible than claimant's recollection of those events. Claimant was unable to provide dates and gave conflicting testimony regarding when he left his employment and whether he notified employer he would not be going into work. Employer relied on contemporaneous notes and written evidence in support of its position. Claimant testified that an assistant manager came to his home around midnight to tell him he was discharged after not showing up for one shift, but that person did not have the authority to terminate a crew chief and claimant did not speak to anyone at employer to verify the information. Additionally, claimant testified he intentionally missed his shifts because he was upset with employer, indicating he quit his employment, and his witness told Diaz claimant would not return to work without raising the issue of the alleged termination.

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). 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).

Here, claimant made the decision to resign and to not return to work because he was frustrated that his girlfriend had been terminated by employer and because of issues related to Facebook posts he made. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The January 8, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant voluntarily left his 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.



Stephanie Adkisson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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March 16, 2021
Decision Dated and Mailed

sa/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If 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 due to disqualifying separations, 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>.