

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JAKEB E SWOTEK**  
Claimant

**PARK HILL INVESTMENTS INC**  
Employer

**APPEAL 21A-UI-08438-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/27/20**  
**Claimant: Appellant (5)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On March 25, 2021, Jakeb Swotek (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated March 16, 2021 (reference 01) that denied benefits based on a finding claimant was discharged on September 2, 2020 for conduct not in the best interest of his employer.

A telephone hearing was held on June 8, 2021. The parties were properly notified of the hearing. The claimant participated personally. His mother, Tammy Swotek, participated as a witness for him. Park Hill Investments, Inc. (employer/respondent) participated by owner Bruce Lowe.

Official notice was taken of the administrative record.

**ISSUES:**

- I. Was the separation from employment 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 began working for employer in February 2020. Claimant worked for employer as a full-time route driver. Claimant's immediate supervisor was Lowe. Claimant separated from employment on September 2, 2020.

On that date, claimant was arrested for an alleged theft. The alleged theft occurred while claimant was performing work for employer, although there is no allegation that claimant stole from employer. When Lowe learned claimant had been arrested, he declined to allow claimant to use the work truck he was driving at the time of the alleged theft to return to employer to retrieve his personal vehicle. Claimant assumed this meant he had been discharged.

Claimant sent Lowe a text message later that day asking when he could return to pick up items in employer's possession, as well as his final paycheck. Claimant sent other messages to Lowe

over the next day or so asking when he could get those items. Claimant made no effort to clarify with Lowe whether he had been discharged and has made no attempt to return to work with employer after that time. Claimant has not worked elsewhere since.

Lowe took these communications to mean that claimant was resigning. Lowe never told claimant he was discharged or asked him to resign. While Lowe would have liked to talk to claimant about what occurred before returning him to work, there was continuing work available pending that conversation.

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

For the reasons set forth below, the decision dated March 16, 2021 (reference 01) that denied benefits based on a finding claimant was discharged on September 2, 2020 for conduct not in the best interest of his employer is MODIFIED with no change in effect.

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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25 provides in relevant part:

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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

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).

Lowe never told claimant he had been discharged and did not ask him to resign. Claimant simply assumed he had been discharged because Lowe declined to allow him to use the work truck to return to employer to retrieve his personal vehicle. Based on this assumption, claimant sent several texts to Lowe asking to retrieve items and his final paycheck. Lowe reasonably interpreted these text messages to mean claimant would not be returning to work there. While Lowe would have liked to talk to claimant about what occurred before returning him to work, there was continuing work available pending that conversation.

Claimant chose to make little to no effort to continue working with employer. He made no effort to clarify the status of his employment or to return to work with employer. In so doing, claimant made a voluntary decision to separate from employment.

The separation here is closely akin to the situation set forth in the above administrative code section, where a claimant resigns because he believes his performance is not satisfactory but has not been discharged or asked to resign. This reason is presumed to be without cause attributable to employer. The administrative law judge finds similarly here that claimant’s resignation was without good cause attributable to employer. Benefits are therefore denied from the date of separation and continuing as set forth below.

The appealed decision is modified solely to reflect that the separation was a voluntary resignation rather than a discharge.

#### **DECISION:**

The decision dated March 16, 2021 (reference 01) that denied benefits based on a finding claimant was discharged on September 2, 2020 for conduct not in the best interest of his employer is MODIFIED with no change in effect. Claimant’s resignation was without good cause attributable to employer and is therefore disqualifying. Benefits must be denied, and employer’s account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant’s weekly benefit amount, provided claimant is not otherwise disqualified or ineligible at that time.



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

June 21, 2021  
Decision Dated and Mailed

abd/ol

***Note to Claimant:***

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.