

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDON C ACHARY
Claimant

HOME DEPOT USA INC
Employer

APPEAL 22A-UI-05053-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/23/22
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On February 22, 2022, Brandon Achary (claimant/appellant) filed a timely appeal from the Iowa Workforce Development (“IWD”) decision dated February 17, 2022 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that he voluntarily quit work on January 23, 2022 for personal reasons.

A telephone hearing was held on April 5, 2022. The parties were properly notified of the hearing. The claimant participated personally. Home Depot USA Inc. (employer/respondent) did not appear for or participate in the hearing. 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:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant’s first day of employment was January 1 or 2, 2022. Claimant worked for employer part-time as a sales representative. Claimant’s immediate supervisor was Sam. The last day claimant worked on the job was January 22 or 23, 2022. Claimant resigned at that time. Claimant would be scheduled to work anywhere between 8 a.m. and 8 p.m. from day to day.

Claimant resigned because working conditions were aggravating his medical conditions. Claimant made this issue known to employer on multiple occasions and requested he be provided a regular, set schedule to address the issue. Not having a set schedule made it difficult for claimant to get consistent sleep, which aggravated his health conditions. This in turn also caused him concern about whether he could safely operate a power lift at the workplace.

Despite claimant raising these concerns, employer does not appear to have earnestly explored whether a reasonable accommodation could be made. Claimant was simply told that providing a set schedule was not possible. Claimant was compelled to resign as a result, as the working

conditions were aggravating his health conditions and in turn causing concern about him hurting himself or someone else while operating the power lift. Claimant believes he could have continued in the employment if he had been accommodated in the form of a set schedule so he could better regulate his sleep.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated February 17, 2022 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that he voluntarily quit work on January 23, 2022 for personal reasons 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.

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:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain 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).

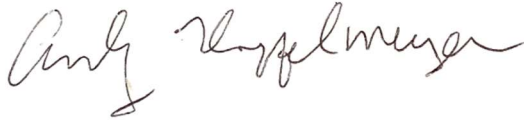
Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary 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).

Claimant was compelled to leave employment because of working conditions which aggravated his health conditions and made it untenable for him to continue working for employer. Claimant has presented competent evidence of these health reasons. He also notified employer of this on several occasions and informed it he had to resign as a result. It does not appear employer earnestly explored whether a reasonable accommodation could be made. He was simply told he could not be provided a set schedule.

Claimant took reasonable steps to preserve the employment relationship but was rebuffed, despite him requesting what seems like a fairly simple change in his working conditions as an accommodation for his medical condition. The administrative law judge finds claimant's resignation under these circumstances was with good cause attributable to employer.

DECISION:

The decision dated February 17, 2022 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that he voluntarily quit work on January 23, 2022 for personal reasons is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account shall be charged.



Andrew B. Duffelmeyer
Administrative Law Judge

April 8, 2022
Decision Dated and Mailed

abd/abd