

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAVIS W MILLER
Claimant

OLD SCHOOL RENOVATIONS LLC
Employer

APPEAL 21A-UI-00223-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (2)

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 November 10, 2020, (reference 04) 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 February 4, 2021. Claimant Travis W. Miller participated and testified. Employer Old School Renovations, LLC participated through owner Gerald Bice.

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 as a construction laborer from August 2019, and was separated from employment on October 16, 2019, when he quit.

Claimant had issues with the boom lift, a piece of equipment he was required to use for his job. Claimant stated the boom lift would start moving on its own while he was in the basket approximately 35-40 feet in the air. Claimant feared that an accident would occur, as he could have fallen out of the lift or it could have driven into traffic. There were ladders available, but the lift was needed for many jobs. Claimant and at least one other employee complained to Bice about the boom lift several times during September and October 2019. Two other employees refused to get in the boom lift due to the unsafe conditions. On more than one occasion, Bice had someone come out to inspect the boom lift, and the repair person could not find a problem but would make adjustments to the lift. Bice acknowledged that an issue did not always present itself when a repair person attempts to identify and fix a problem. The issue with the boom lift continued and was not resolved. On October 16, 2019, claimant quit his employment because he felt his working conditions were unsafe.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

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. 871-24.26(2) provides:

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.

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, the boom lift would begin driving on its own, causing unsafe conditions for employees in the basket which went as high as 40 feet. Despite several complaints, the issue was not resolved. The evidence establishes that the working conditions were unsafe. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The November 10, 2020, (reference 04) unemployment insurance decision is reversed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.



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

February 18, 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>.