

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL D DUVE
Claimant

LINCARE INC
Employer

APPEAL 21A-UI-21388-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/22/21
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Michael D. Duve, filed an appeal from the September 23, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant voluntarily quit employment with the employer, Lincare, Inc., because he was dissatisfied with the work environment, but not for a reason attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on November 17, 2021. The claimant participated personally. The employer participated through Toni McColl, who did not testify, with testifying witness Sarah Grover.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the 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 service representative from October 21, 2004, until this employment ended on August 20, 2021, when he resigned.

Claimant began having concerns about his employment approximately three years prior to his resignation. At that time, the location where claimant worked closed. The employer moved him to a storage facility as his primary work location. At that location, he had to leave the worksite if he needed to use the bathroom because there were no bathroom facilities onsite.

Approximately a year-and-a-half later, the employer discharged the Bettendorf service representative. Claimant was assigned to work Bettendorf two days a week, and to share the territory with his supervisor, Drew Schneider. Claimant asserts that Schneider regularly assigned more of the route to claimant and failed to appropriately share the workload as originally agreed. Claimant asked a number of times when he might be able to return to working only the Dubuque area, but he never received an answer.

Claimant also took issue with Schneider's conduct. Schneider would tell claimant and other employees to lie to patients who called asking to speak with him. When the COVID-19

pandemic set in, Schneider was supposed to take employees' temperatures daily. He did not do so and told employees to lie to corporate and tell them he did. Claimant also felt that Schneider retaliated against him when claimant complained or refused to follow Schneider's orders. After such incidents, Schneider would assign claimant more work.

Claimant made a number of complaints about these issues to Schneider's supervisor, Doug McBride. However, claimant never felt he received a meaningful response from McBride. Claimant never made a complaint to HR or anyone else at the employer.

Claimant felt the employment was causing significant stress and went out on medical leave. At some point after he returned from leave, Schneider left the employer. Nevertheless, claimant felt he had no choice but to resign. He submitted his resignation, with two weeks' notice, to Grover on August 9, 2021, with an effective date of August 20, 2021. He did not provide a reason for his resignation to Grover.

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(21) 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.

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).

To be clear, claimant's allegations regarding his work location—a storage unit with no bathroom onsite—are concerning. However, claimant testified that he worked in these conditions for three

years before he resigned. While he expressed concerns about the work location to McBride, he did not make any additional complaints to HR or any other supervisor, even when he did not receive a meaningful response from McBride.

However, claimant's central complaints according to his testimony were regarding Schneider. The administrative law judge cannot overlook the fact that Schneider was no longer working at the employer at the time that claimant resigned. The source of claimant's primary concerns was no longer a factor in claimant's employment, but he resigned anyway. Additionally, claimant omitted the fact that Schneider was no longer an employee of the employer at the time of claimant's resignation during his initial testimony. This omission substantially undermined claimant's credibility.

Accordingly, the administrative law judge concludes that, 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 September 23, 2021, (reference 01) 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.



Alexis D. Rowe
Administrative Law Judge

December 22, 2021
Decision Dated and Mailed

ar/scn