

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVE MCGILL
Claimant

JIMMY JOHNS
Employer

IWD Appeal No. 21A-UI-06940
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/31/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 23, 2021 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on April 27, 2021. The claimant, Steve McGill, participated personally. The employer, Jimmy Johns, did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents. The appellant's exhibits were also admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

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. His hours were minimal, however, and in May 2020 he filed for partial unemployment. His last day on the job was July 31, 2020, which marked the end of the two weeks' notice claimant provided to his employer. Claimant worked in the Jimmy Johns shop and also occasionally served as a night manager when the location was short-staffed. He worked two or three days a week, for four or five hours per shift, at most.

Claimant does not dispute that he quit his job. He quit because his roommate, friend, and co-worker (all the same person) began having mental health issues, which the friend declined to treat. Claimant came to believe his living situation was unsafe. He needed to leave the living situation and could not afford to live in Denver without a roommate, and wanted to move back to Iowa. From those decisions, it followed he needed to quit his job in Denver. Claimant notes that, at the time, the friend was not acting unpredictably at work, although he has come to learn that changed.

Claimant's application for unemployment benefits was denied. He filed a timely appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

- a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Administrative Code rule 871-24.32(1)(a) provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

First it must be determined whether claimant quit or was discharged from employment. A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992).

In this case claimant had an intention to quit and carried out that intention by notifying his employer he intended to quit. The undersigned concludes the claimant could have continued to work at the employer, but he chose to leave. Claimant voluntarily quit.

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, 829 (Fla. Dist. Ct. App. 1973).

Iowa Administrative Code rules 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 "l", and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

.....

(2) The claimant moved to a different locality.

.....

(6) The claimant left as a result of an inability to work with other employees.

.....

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

Iowa Administrative Code rule 871-24.26 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include a change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in the working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

(2) The claimant left due to unsafe working conditions.

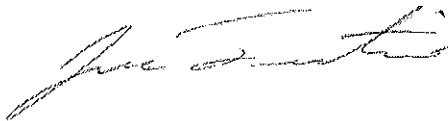
.....

(4) The claimant left due to intolerable or detrimental working conditions.

Here the claimant quit because of his unsafe living conditions. While the cause of that lack of safety also happened to be a co-worker, it was apparent at hearing that claimant had not previously considered his workplace unsafe. Of the many ways one could label this quit, the undersigned concludes the most accurate is that the claimant left because of personal reasons unrelated to his employment. It was not that the working conditions were unsafe, intolerable, or detrimental. It was not that the conditions of employment changed. At the time claimant quit, he was still able to work with other employees (e.g., his roommate) and was not dissatisfied with the working conditions. The quit was caused by the decision to move to another locality. On these facts, the undersigned concludes the quit was not for good cause attributable to the employer. Benefits are denied.

DECISION:

The February 23, 2021 (reference 02) unemployment insurance decision is affirmed. Benefits will be denied.



Joseph Ferrentino
Administrative Law Judge
Department of Inspections and Appeals
Administrative Hearings Division

April 29, 2021
Decision Dated and Mailed

JF/lb

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>.