

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KEVIN J HORSTMAN**  
Claimant

**SIVYER STEEL CASTINGS LLC**  
Employer

**APPEAL 21A-UI-05919-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/20/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Kevin Horstman (claimant) appealed an Iowa Workforce Development March 16, 2021, decision (reference 02) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the Sivyer Steel Castings (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 30, 2021. The claimant participated personally. The employer participated by Jennifer Collins, Human Resources Director. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from September 25, 2012, to April 15, 2020. At the end of his employment, he was working as a full-time fork truck driver.

The employer had work available for the claimant after April 15, 2020, only if he bumped a less senior fellow employee. The claimant chose not to bump and his last day of work was April 15, 2020. He started working for DES Staffing on November 30, 2020. On December 9, 2020, he asked the employer for his 401K funds.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

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(27) provides:

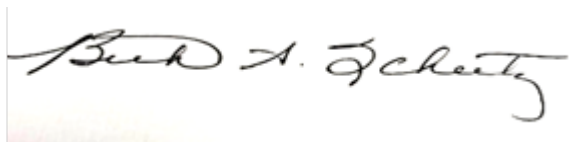
Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(27) Refusal to exercise bumping rights privilege. An individual who has left employment in lieu of exercising the right to bump or oust a fellow employee with less seniority shall be eligible for benefits.

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). The claimant's intention to voluntarily leave work was evidenced by the claimant's actions. The claimant told the employer he would not continue working because he did not wish to bump a co-worker with less seniority. A claimant who does not elect to bump into a position of a less senior worker when his job is eliminated is not disqualified from receiving unemployment insurance benefits. The claimant did not elect to bump a less senior employee and is, therefore, eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's March 16, 2021, decision (reference 02) is reversed. The claimant voluntarily quit work with good cause attributable to the employer. Benefits are allowed.



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Beth A. Scheetz  
Administrative Law Judge

May 7, 2021  
Decision Dated and Mailed

bas/scn