

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DAVID EARLEYWINE**  
Claimant

**DON WYCKOFF HEATING INC**  
Employer

**APPEAL 21A-UI-23011-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/12/21**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant, David Earleywine, filed an appeal from the October 11, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion he was discharged for violating a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on December 8, 2021. The claimant participated and testified. The employer participated through Owner Job Cooper.

**ISSUE:**

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:

The claimant worked as a lead new construction installer from November 19, 2012, until September 11, 2021, when he quit. The claimant's immediate supervisor was Field Supervisor Jesse Parker.

On September 10, 2021, Mr. Parker sent the claimant a text message stating he did not know if he wanted the claimant to report to work on the following day. Mr. Parker said he did not know if "it was going to work" and clarified that the claimant had not been getting enough work done.

On September 11, 2021, the claimant arrived at work at 7:00 a.m. The claimant sent a text message to Mr. Parker that if he did not want him to work, then he would pick up his remaining tools and leave. Mr. Parker asked the claimant to call him. Mr. Parker asked the claimant if he would be able to fit a furnace, pull gas lines, install Concentrix, and punch out some back fans. The claimant said he did not believe he would be able to get it all done in time. Mr. Parker said that it would not be acceptable for him not to get it all done in time. In response, the claimant told Mr. Cooper and Mr. Parker he was quitting.

## 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 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:

(27) The claimant left rather than perform the assigned work as instructed.

(28) The claimant left after being reprimanded.

The 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's description of his separation more accurate than Job Cooper's description of his separation.

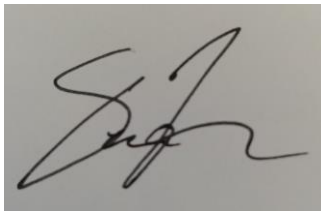
In the hearing, Mr. Cooper said the claimant had been terminated for attendance. Mr. Cooper only could testify to a handful of dates the claimant was absent. He explained that his human resources generalist was out for the day due to a Covid19 infection. The claimant denied being absent on the days Mr. Cooper said he was absent. Mr. Cooper also said the claimant told Mr. Parker he quit on his final day, which is inconsistent with the idea he was terminated for attendance. Given these circumstances, the administrative law judge does not find Mr. Cooper's allegation that the claimant was terminated for attendance credible.

In this case, the claimant assumed that if he did not get the work done that Mr. Parker had instructed him to do, that he would be terminated. Mr. Parker did not say the claimant would be terminated if he did not get the work done. Under these circumstances, the claimant quit and his reason for quitting is disqualifying under Iowa Admin. Code r. 871-24.25 (27) and (28).

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 October 11, 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.



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Sean M. Nelson  
Administrative Law Judge  
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January 14, 2022  
Decision Dated and Mailed

smn/mh