

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RONNIE C BOLHUIS
Claimant

BERTCH CABINET MFG INC
Employer

APPEAL 18A-UI-02032-JP
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/24/17
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 filed an appeal from the February 5, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in-person hearing was held on March 20, 2018 at 3420 University Avenue, Suite A, in Waterloo, Iowa. Claimant participated. Employer participated through production manager Tracy Bertch and human resources manager Mitzi Tann. Employer Exhibit 1 was admitted into evidence with no objection.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a L50 sanding apprentice from December 1, 1997, and was separated from employment on January 15, 2018, when he quit.

Claimant was working in the Jesup facility operating a forklift, but in October 2017, he transferred to the Crossdock Division in Waterloo. At the Crossdock Division, claimant was responsible for loading and unloading trailers by hand. While claimant was at the Crossdock Division, he injured his back. Claimant provided the employer a doctor's note that he had a twenty pound lifting restriction as of January 2, 2018. After the injury, claimant was only able to unload the trailers. Sometime before January 15, 2018, claimant was informed by the employer about a position in the Jesup facility that was open where he could work at 100% based on those job duties at the Jesup facility. Claimant agreed to go to the position at the Jesup facility; but his manager did not know what the position/job duties would be at the Jesup facility when claimant accepted the job. Claimant was told by the manager he would find out about the job duties on January 15, 2018. Approximately two weeks before January 15, 2018, Mr. Bertch was informed that claimant would be transferred back to the Jesup facility because claimant could not perform all of his job duties in the Crossdock Division. Claimant was informed he was to have a meeting with the employer on January 15, 2018. The employer wanted to meet with

claimant to make sure he understood that he would not be going back into a forklift driving position.

On January 15, 2018, claimant met with Mr. Bertch and his direct supervisor Mike Shannon (L50 department leader). The employer discussed with claimant that he would not be going back to a forklift driving job. The employer explained to claimant that since he had left the Jesup facility, the employer had reduced the amount of forklift driving hours and the remaining hours were being performed by other employees. Mr. Bertch told claimant he would be working on the robo-tech sander (a feeding and catching machine) and on the sanding benches. Claimant's new job duties complied with his work restrictions. Claimant did not inform the employer the new job duties would not comply with his work restrictions. Claimant kept telling the employer he was hired as a forklift driver. Mr. Bertch then got stern with claimant and told him he was not going back on the forklift, he was going on the robo-tech and sanding benches. Claimant asked what if he did not do it (work on the robo-tech sander and sanding benches). Mr. Bertch responded "well, then you can leave." Mr. Bertch then ended the meeting and exited the room. Claimant sat for a few minutes and then got up and left the room with Mr. Shannon following him. Claimant went to the time clock and clocked out, even though his shift had just started. Claimant told Mr. Shannon it was nice working with him. Mr. Shannon did not make a comment. Claimant then walked out the door, went to his vehicle, and drove home. Claimant did not return to the employer on January 15, 2018.

The employer had work available for claimant. Claimant never returned to the employer. Claimant never contacted the employer about returning. The employer did not tell claimant he was fired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer. Benefits are denied.

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. 871-24.25(27) 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.

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). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

Prior to January 15, 2018, claimant agreed to transfer to a new position at the Jesup facility without knowing what the new position's job duties would be. On January 15, 2018, Mr. Bertch explained to claimant what his job duties would be at the Jesup facility. Claimant expressed that he had previously been a forklift driver at the Jesup facility. Mr. Bertch informed claimant he would not be a forklift driver at the Jesup facility because things had changed since he last worked at the Jesup facility. Claimant asked Mr. Bertch what would happen if he did refuse to work the new position. Mr. Bertch informed claimant that if he refused to work the assigned position, then he would not work there anymore. Mr. Bertch was not telling claimant he was discharged. The employer never told claimant he was discharged. The employer was merely answering claimant's hypothetical question. After the meeting ended, claimant refused to report to his new position and he clocked out and left the employer. Claimant never returned to the employer after he left.

Claimant's decision to quit because he did not want to perform the job duties he was assigned was not for a good cause reason attributable to the employer. Iowa Admin. Code r. 871-24.25(27). Claimant's leaving the employment and the failure to return to work renders the separation job abandonment without good cause attributable to the employer. While claimant's leaving the employment 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 must be denied.

DECISION:

The February 5, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs