

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOHN M RUSSELL**  
Claimant

**BAKER'S PRIDE INC**  
Employer

**APPEAL 20A-UI-01439-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/24/19  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

On February 14, 2020, John Russell (claimant) filed a timely appeal from the February 6, 2020 (reference 03) unemployment insurance decision that found he was not eligible for benefits.

A telephone hearing was held on March 4, 2020. The parties were properly notified of the hearing. The claimant participated personally. Baker's Pride Inc. (employer) did not register a number for the hearing and did not participate.

**ISSUE(S):**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer full-time as a machine operator. Claimant began working for employer around March 2010. The last day claimant worked on the job was at the end of November 2019. Claimant's hours began fluctuating around that time due to no fault of his own. As a result, claimant voluntarily quit to accept other employment at American Ordnance. Claimant performed services in that new employment beginning December 2, 2019.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the February 6, 2020 (reference 03) unemployment insurance decision that found claimant was not eligible for benefits is REVERSED. Claimant is eligible for benefits, so long as he meets all other eligibility requirements.

Iowa Code section 96.5(1)a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Because claimant voluntarily quit to accept other employment and has performed services in that new employment, he is not disqualified from receiving benefits. Furthermore, employer's account shall not be charged.

**DECISION:**

The February 6, 2020 (reference 03) unemployment insurance decision is REVERSED. Claimant is eligible for benefits, so long as he meets all other eligibility requirements. Employer's account shall not be charged.

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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

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Decision Dated and Mailed

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