

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGEL L TOLEDO CASTILLO
Claimant

T K CONCRETE INC
Employer

APPEAL 17A-UI-10509-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/24/17
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

T K Concrete, Inc. (employer) filed an appeal from the October 12, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination Angel L. Toledo Castillo (claimant) did not voluntarily quit but was discharged and the employer failed to furnish evidence of willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on November 2, 2017. The claimant did not respond to the hearing notice and did not participate. The employer participated through Supervisor Jason Mallicoat. No exhibits were offered into the record.

ISSUES:

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

Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Laborer beginning on July 31, 2017, and was separated from employment on September 21, 2017. Prior to that day, the claimant had reported to Foreman Lupe Alvarez. Alvarez left his employment on or about September 19. The claimant reported to work on September 21 and began reporting to Foreman Roberto. Shortly after work began, the claimant notified Supervisor Jason Mallicoat that he had an argument with Roberto and was leaving as he did not want any problems. Mallicoat had no further contact with the

claimant. If the claimant had problems with Roberto, he could have reported the issues to Mallicoat for resolution before quitting. The employer had continuing work for the claimant.

The administrative record reflects that the claimant has not received any unemployment insurance benefits since filing a claim with an effective date of September 24, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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

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. The burden of proof rests with the employer to show that the claimant voluntarily left his employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). 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). It 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 there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, the unrefuted testimony is that the claimant notified Mallicoat he was leaving his employment and that there was continuing work available to the claimant. The employer has met its burden of proof to show the claimant voluntarily left his employment.

The claimant then 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). Employees who voluntarily quit due to personality conflicts with supervisors or due to a dislike of the work environment are presumed to have quit without good cause attributable to the employer. See Iowa Admin. Code r. 871-24.25(22).

The claimant's decision to quit because he had an argument with his new supervisor was not for a good cause reason attributable to the employer. Benefits are denied.

As the claimant has not received any unemployment insurance benefits prior to the date of the hearing, the issues of overpayment and repayment are moot.

DECISION:

The October 12, 2017, reference 01, unemployment insurance decision is reversed. The claimant voluntarily left the 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. The issues of overpayment and repayment are moot as the claimant has not received any benefits prior to this date.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn