

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARK A DIRTH**  
Claimant

**KPI CONCEPTS LLC**  
Employer

**APPEAL 21A-UI-18616-AD-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/06/21**  
**Claimant: Respondent (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 August 24, 2021, KPI Concepts LLC (employer/appellant) filed an appeal from the August 18, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was dismissed from work on May 31, 2021 without a showing of misconduct.

A telephone hearing was held on November 1, 2021. The parties were properly notified of the hearing. Employer participated by HR Rep. Chelsea Wallace. Mark Dirth (claimant/respondent) did not register a number for the hearing or participate.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. 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's first day of employment was February 17, 2020. The last day claimant worked on the job was February 16, 2021. Claimant separated from employment on May 25, 2021. Claimant retired at that time. There was continuing work available had he not retired. Claimant has not received benefits since the date of separation.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the August 18, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was dismissed from work on May 31, 2021 without a showing of misconduct is REVERSED.

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

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 provides in relevant part:

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:

**(24)** The claimant left employment to accept retirement when such claimant could have continued working.

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).

In this case, the claimant did not have the option of remaining employed nor did he express intent to terminate the employment relationship. 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).

Claimant voluntarily retired when continuing work was available. This is not a good cause reason for resigning attributable to employer. Benefits must therefore be denied.

Because the separation was disqualifying and claimant has not received benefits since the date of separation the other issues noticed need not be addressed.

**DECISION:**

The August 18, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was dismissed from work on May 31, 2021 without a showing of misconduct is REVERSED. The separation from employment was disqualifying. Benefits are denied from the date of separation and continuing until claimant earns wages for insured work equal to ten times the weekly benefit amount.



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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

November 17, 2021  
Decision Dated and Mailed

abd/ol

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.