

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COREY D YOUNG

Claimant

APPEAL 16A-UI-12962-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTIVE THERMAL CONCEPTS INC

Employer

OC: 11/06/16

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 1, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 22, 2016. Claimant participated. Dianna Young participated on claimant's behalf. Employer participated through operations director Matt Yamilkoski and job site manager Tim Clark. Asbestos abatement supervisor Ed Hamilton registered for the hearing on behalf of the employer, but he did not attend the hearing. Claimant Exhibit A, B, C, D, and E were admitted into evidence with no objection.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an abatement worker with a supervisor license from June 14, 2016, and was separated from employment on November 7, 2016, when he quit.

Claimant quit his employment after three events from job site conditions that he felt an employee may get hurt. On October 21, 2016, claimant was working on a remodel of the inside of a commercial building. Prior to starting the remodel work, Mr. Yamilkoski did a walkthrough of the site and showed the employees what utilities were on and off; the gas remained on. Mr. Yamilkoski testified that because it was a remodel, the gas did not need to be shut off. Mr. Yamilkoski testified that demolition is the removing of the entire building, which requires the gas being shut off. During the remodel work, Mr. Hamilton decided to remove the water heater and hit the gas line connection with a sledge hammer. The water heater was not supposed to be removed during the remodel. Mr. Hamilton did not turn off the gas prior to removing the water heater and when he struck the gas line, it caused gas to start escaping. Claimant and the employees evacuated the building and Mr. Yamilkoski, MidAmerican Energy, and emergency services were contacted because the building was filling up with gas. No one was injured from the incident and work was delayed approximately an hour. Claimant did not report the incident

to anyone. Claimant testified he believes it was a reportable incident and could have been reported to OSHA.

On October 31, 2016, claimant was on a job site performing abatement work (removing asbestos from the ceiling). Claimant was working with three or four temporary employees. OSHA requires water to be used when removing asbestos. Claimant testified that during the removal process he requested to use water. Claimant testified he requested water from an employee that was acting like a foreman and was told not to use water or wet anything. Claimant started using water with a hose and the employee came back and removed the water. Claimant testified he requested to use water from Mr. Clark (the supervisor), but was denied water. Mr. Clark testified claimant never approached him about using water. Mr. Clark testified there was water available for claimant to use. Mr. Yamilkoski testified he would have fired any employee that would have denied claimant water to remove asbestos. Claimant was denied using a garden hose to wet the asbestos, but the employer to provide smaller water units to work that would prevent other areas in the vicinity from getting wet. Claimant did not complain to Mr. Yamilkoski on October 31, 2016 about not having water to use. Claimant contacted two supervisors at a company he used to work for and a president at another abatement company and they stated he should get out of there and it was completely wrong. The president of the other company gave claimant a number to contact and told him to report the incident. Claimant did not report the incident to anyone until November 7, 2016. Claimant Exhibit D. Claimant continued working after speaking to the three individuals.

The final incident occurred on November 7, 2016 when claimant was working on top of a roof doing removal. There were two other coworkers on the roof, but claimant had the most experience. Mr. Yamilkoski received a phone call about a Facebook picture and he went to the job site to see what was going on. Mr. Yamilkoski went to the top of the roof with Mr. Clark. Mr. Yamilkoski observed claimant's harness was strapped around his chest, but not his legs. To properly wear a harness, claimant needed it strapped around his chest and legs. Claimant testified the harness was not the right size and would not strap around his legs. Claimant also testified that he requested a different harness from the supervisor, Mr. Clark, but was told that is what the employer had. Mr. Clark denied claimant complained about his harness. Claimant also did not have the rope connected to his harness. Mr. Yamilkoski observed that the rope was not connected to anything; it was just lying around a metal piece. Claimant Exhibit A. Mr. Yamilkoski also observed claimant was outside the marked six foot area. Claimant is required to have the fall protection outside the six foot flag taped area; if claimant was inside the area he did not need anything. Claimant was aware he needed to be tied off due to his training and experience. When Mr. Yamilkoski observed this, he asked claimant why he was not tied off. Claimant was unpleasant and stated he was not going to do it, he did not have the right stuff. Mr. Yamilkoski again asked why his harness was not on. Claimant kicked the first tie off point and said I cannot tie off to this so why have the harness on. Claimant Exhibits A and C. Mr. Yamilkoski kept asking the same question and why claimant was outside the flag tape. Claimant was not giving Mr. Yamilkoski a sufficient answer. Finally, Mr. Yamilkoski said, "You've got ten seconds to get tied off, or get the f**k off my job". Claimant stated "I can't work in these f**king unsafe conditions." While they were having the argument and claimant was telling Mr. Yamilkoski he did not have the right equipment, Mr. Yamilkoski hooked up the rope to the second tie off point and connected the rope to claimant's back and claimant hooked his leg straps. Claimant Exhibit B. Claimant continued to work on the roof after this conversation, but did not report to the next job site. After claimant finished his work on the roof, he quit the employer. Claimant did not bringing his concerns to an owner. November 7, 2016 was the third day claimant had worked on the roof. Claimant testified his harness had not worked any of the three days he was on the roof. Claimant did not report his harness was not appropriate on the first two days.

Claimant filed a complaint with OSHA after he quit about the October 31, 2016 and November 7, 2016 incidents. Claimant Exhibit D. Claimant testified the OSHA complaint is still open; however, Mr. Yamilkoski testified that OSHA came to the job site, evaluated the employer, and it was Mr. Yamilkoski's understating that there would be no citations or write-ups issued against the employer and the complaint was closed.

When Mr. Yamilkoski hired claimant and they had a good relationship in the beginning. Mr. Yamilkoski told claimant to report anything to him that did not look right on the job site. Claimant had reported prior issues with the job site to Mr. Yamilkoski. Claimant was not disciplined and there were not any negative consequences for making complaints. Claimant has a supervisor's license, which is the highest level of training the State recognizes. Claimant has approximately three years of experience in removing asbestos.

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. Benefits are denied.

Iowa Code § 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(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.

Iowa Admin. Code r. 871-24.25(28) 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:

(28) The claimant left after being reprimanded.

Iowa Admin. Code r. 871-24.25(22) 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:

(22) The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.25(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

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).

Claimant testified he quit his employment due to three separate incidences that occurred on October 21 and 31, 2016 and November 7, 2016. The employer presented credible testimony that the October 21, 2016 incident was the result of a mistake made by Mr. Hamilton. Mr. Yamilkoski credibly testified that the water heater was not to be removed, but Mr. Hamilton decided to remove it causing the gas leak.

Claimant's argument that he was denied water on October 31, 2016 when he was removing asbestos is not persuasive. Mr. Clark credibly testified that claimant did not ask for water on October 31, 2016 and there was water available for claimant to use. Although the water apparatus may not have been as big as claimant wanted, the employer did have water available for him that would not get other areas wet at the same time. Mr. Clark's testimony was corroborated by Mr. Yamilkoski's testimony that any employee that denies another employee water in removing asbestos would be automatically discharged.

Claimant's argument that he did not have a proper tie off point and his harness was not proper on November 7, 2016 is also not persuasive. It is noted in claimant's OSHA complaint, after Mr. Yamilkoski told him he had ten seconds to tie off or get off the roof, claimant stated "[i] was intimidated and with no back talk did as was told and finished the job with two other workers." Claimant Exhibit D. However, at the hearing, claimant testified that after Mr. Yamilkoski told him he had ten seconds to tie off or get off the roof, he told Mr. Yamilkoski "I can't work in these f**king unsafe conditions." Telling Mr. Yamilkoski "I can't work in these f**king unsafe conditions," appears to contradict his statement in his OSHA complaint that "[he] was intimidated and with no back talk" he finished the job. Claimant Exhibit D. When Mr. Yamilkoski arrived on the roof on November 7, 2016, claimant was not tied off, his harness was not fastened properly, and he was outside of the marked area. During the argument about claimant not being properly tied off, Mr. Yamilkoski told claimant to either tie off or get off the roof. Although the first tie off point (See Claimant Exhibit A) may not have been appropriate, there were other tie off points available. Mr. Yamilkoski then tied claimant off. It is noted, that when Mr. Yamilkoski tied claimant off, claimant was able to properly fasten his harness, despite claimant's testimony the harness was not appropriate. Mr. Clark provided credible testimony that claimant had not complained about the harness. Furthermore, November 7, 2016 was the third day claimant had worked on the roof and although he testified the harness did not work any of the days, he made no complaints to the employer about the harness until Mr. Yamilkoski approached him on November 7, 2016 about not being properly tied off. It is also noted that claimant had approximately three years of experience in asbestos removal and had made prior complaints to Mr. Yamilkoski, but did not report any of the issues until Mr. Yamilkoski confronted him on November 7, 2016.

Claimant did not meet his burden of proof that the voluntary leaving was for good cause attributable to the employer. Claimant's decision to quit because he did not agree with the supervisor about various issues was not for a good cause reason 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 December 1, 2016, (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