

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**JONATHAN S GUSTIN**  
Claimant

**HAWKEYE ESTATES LLC**  
Employer

**APPEAL 17A-UI-10999-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/02/16**  
**Claimant: Appellant (1)**

---

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 16, 2017 (reference 05) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit his employment. The parties were properly notified of the hearing. A telephone hearing was held on November 14, 2017. The claimant, Jonathan S. Gustin, participated. The employer, Hawkeye Estates, L.L.C., participated through Heidi Vanden Hull, Director of Human Resources. Claimant's Exhibits A and B and Employer's Exhibits 1 through 8 were received and admitted into the record without 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, most recently as an environmental services aide, from October 6, 2016, until August 17, 2017, when he quit. Claimant submitted a two-week notice on August 2, 2017, stating he was resigning because the employer was not giving him two days off in a row. Claimant and the employer made an agreement dated April 12, 2017, that he would work 64 hours per pay period and have two days off in a row. (Exhibit B) On or about June 17, 2017, the employer notified him that this schedule arrangement would be changing. Specifically, claimant's weekly hours would be reduced to 30 hours per week. (Exhibit 2) Claimant was also verbally notified that he would temporarily not have two days off in a row anymore, due to staff shortages. Claimant also experienced health issues during his employment that he attributes to his employment. Beginning on January 31, claimant began vomiting at work on occasion. This ailment did not occur when claimant was not at work. Claimant submitted documentation from his nurse practitioner indicating he discussed a possible change of employment with her, due to his health issues. (Exhibit A) Continued work was available, had claimant not quit his employment.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from employment was without good cause attributable to the employer. Benefits are withheld.

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

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.26(6)b provides:

**Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits.** The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

*b. Employment related separation.* The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an

opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Empl't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant testified, and his medical documentation corroborates, that his health condition solely affected him at work. This sufficiently establishes that claimant had a work-related medical condition. However, claimant's doctor did not instruct him to quit his employment. Further, claimant did not inform the employer prior to quitting that he intended to quit unless the employer accommodated him. Therefore, claimant has not met the requirements of the administrative rule governing quitting due to a work-related medical condition.

Iowa Admin. Code r. 871-24.26(1) provides:

**Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits.** The following are reasons for a claimant leaving employment with good cause attributable to the employer:

**24.26(1)** A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Empl't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). An employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, (No. \_\_\_-\_\_\_/\_\_\_-\_\_\_, Iowa Ct. App. filed \_\_\_, 1986). Here, claimant's schedule was temporarily changed. The administrative law judge understands claimant disliked not having two days off in a row. However, claimant was never guaranteed this schedule and he was assured the change was temporary to accommodate the staffing shortage. Claimant did not suffer a change in his contract of hire sufficient to justify quitting his employment.

Iowa Admin. Code r. 871-24.25 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.

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

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). Here, the circumstances claimant described do not amount to anything so intolerable, abusive, or dangerous as to justify an immediate quit. 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 likely had compelling personal reasons to end his employment. However, his decision to quit was without good cause attributable to the employer. Benefits are withheld.

**DECISION:**

The October 16, 2017 (reference 05) unemployment insurance decision is affirmed. Claimant separated from 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.

---

Elizabeth A. Johnson  
Administrative Law Judge

---

Decision Dated and Mailed

lj/rvs