

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CHRISTOPHE J PETIT**  
Claimant

**AMES RACQUET AND FITNESS CENTER**  
Employer

**APPEAL 19A-UI-00281-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/09/18  
Claimant: Appellant (1)**

Iowa Code §96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 9, 2019, (reference 02) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on January 28, 2019. Claimant participated and testified. Claimant's fiancé, Ruby Wallace, also participated on his behalf. Employer participated through Operations Manager Lisa Martin. Claimant's Exhibits A and B were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in April 2017. Claimant last worked as a part-time janitor/custodian. Claimant was separated from employment on December 20, 2018, when he voluntarily quit.

As part of his regular job duties, claimant was required to work with various cleaning chemicals. Claimant found the chemicals sometimes made various environmental allergies worse. Claimant informed the employer of this and his job duties were modified to limit his exposure to certain chemicals. Unfortunately, this meant less work was available for claimant and in October his daily shifts were cut from three hours to one and half hours. More hours would have been available for claimant to work if he was willing and able to work Friday through Sunday, which he was not.

Despite the accommodation, claimant continued to have problems. Claimant requested a mask and his request was granted. On December 19, 2018, claimant sent an email to Martin explaining that the mask was not working and he would need a different mask. (Exhibit B, pg.15). Martin forwarded the request on to the appropriate department so a new mask could be ordered. On December 20 Martin sent claimant an email stating she had been receiving

complaints that his work was not getting completed. (Exhibit B, pg. 16). The email outlined her expectations for the claimant. The claimant responded by resigning. (Exhibit B, pg. 17).

During the hearing claimant testified he resigned because of his health issues and his impression that the employer was not concerned with finding him a new mask. Claimant acknowledged that no one ever outright refused to provide him with a new mask and that he expected they would have a new one within one day of his request. Claimant was not advised by a medical professional to resign, nor did he tell the employer he would have to resign if accommodations were not made. Had the claimant not resigned work would have continued to be available to him.

### **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.

Iowa Code section 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 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.

...

(28) The claimant left after being reprimanded.

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).

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.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

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. Emp'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)).

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Claimant testified he resigned due to his medical condition. However, it appears, based on his December 20, 2018 email to the employer, that his resignation was actually in response to Martin's email outlining his job expectations. Even if claimant did resign because of his medical condition, he did not do so upon the advice of his doctor. Additionally, he did not inform the employer he would have to resign if an accommodation was not made, nor did he provide the employer with adequate time to address and meet his request for an accommodation. While claimant's leaving 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 are denied.

**DECISION:**

The January 9, 2019, (reference 02) unemployment insurance decision is affirmed. The claimant voluntarily left his 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.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs