

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JIMMY STURSMAN

Claimant

BEN SHINN TRUCKING INC

Employer

APPEAL 20A-UI-08913-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2) – Discharge Due to Misconduct

STATEMENT OF THE CASE:

Claimant Jimmy Stursma filed an appeal from a July 16, 2020 (reference 01) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer, Ben Shinn Trucking Inc. ("Ben Shinn"). Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for September 9, 2020. Stursma appeared and testified. Cindy Stark appeared and testified on behalf of the University of Iowa. I took administrative notice of the claimant's unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

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

FINDINGS OF FACT:

Stursma commenced full-time employment as a truck driver with Ben Shinn on May 28, 2013. Stursma's immediate supervisor was Michael Shinn.

In the summer of 2019, Stursma's truck broke down. He met with Stark in her office on August 1, 2019. The repairs to Stursma's truck were expensive and Stark told Stursma his truck would be repaired after other trucks were repaired first. Stark testified she offered Stursma an alternative truck to drive, Stursma elected to wait until his truck was repaired, and he applied for unemployment benefits, which he received. Stursma testified Stark did not offer him another truck and denied refusing the offer. Ben Shinn continued to pay for Stursma's health insurance.

On or about October 1, 2019, Stark received information Stursma was driving a truck for another employer. Stark called Stursma and asked him if he had found other employment. Stursma informed Stark he was self-employed driving a truck. Stark told Stursma Ben Shinn would not pay for his health insurance when he was driving a truck for another company. Stursma told her he understood. Stursma testified he believed he was still on layoff when he was driving for another company.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides an individual “shall be disqualified for benefits, regardless of the source of the individual’s wage credits: . . . If the individual has left work voluntarily without good cause attributable to the individual’s employer, if so found by the department.” The Iowa Supreme Court has held a “voluntary quit” means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer.” *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires “an intention to terminate the employment relationship accompanied by an overt act carrying out the intent.” *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). “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).

871 Iowa Administrative Code 24.25(3), (19) and (21) provide:

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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

24.25(3) The claimant left to seek other employment but did not secure employment.

24.25(19) The claimant left to enter self-employment.

24.25(21) The claimant left because of dissatisfaction with the work environment.

871 Iowa Administrative Code 24.26(1) and (4), also provide:

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.

24.26(4) The claimant left due to intolerable or detrimental working conditions.

“Change in the contract of hire” means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Serv.*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Emp’t Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer’s motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Emp’t Appeal Bd.*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

Stursma testified he wanted his truck repaired. Stark reported she offered Stursma an alternative truck to drive on or about August 1, 2019 and he refused. Stursma stated he had driven other trucks in the past and they were always breaking down. I do not find Ben Shinn guaranteed Stursma would only have to drive one truck. Ben Shinn offered Stursma an alternative truck. I do not find the offer of an alternative truck constituted a change in the contract of hire or that his working conditions were detrimental or intolerable where a reasonable person would feel compelled to quit.

While Stursma was on layoff awaiting repair of his truck, Stursma entered into an agreement with a trucking company to drive a truck as a self-employed trucker. When Stark learned Stursma was driving a truck for another company she contacted him and informed him that Ben Shinn would discontinue his health insurance effective October 1, 2019. Stark testified Ben Shinn considered Stursma quit his employment effective October 1, 2019. I find Stursman quit his employment to enter self-employment.

During the hearing, Stursma expressed anger about receiving an overpayment and the agency's decision to pay him unemployment benefits. He also expressed anger about the fact-finding process. I did not review any overpayment issue related to this case. I told Stursma I was not involved in any policy decisions of this agency to pay individuals unemployment benefits during the pandemic. I also told him I was not involved in the underlying decision or fact-finding process and that my only role was to review the decision that was issued on July 16, 2020, reference 01, which found he voluntarily quit his employment on October 1, 2019. Benefits are denied.

DECISION:

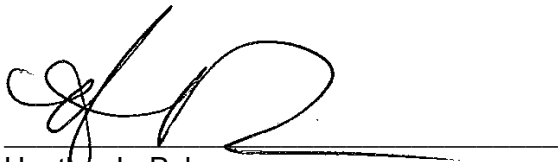
Regular Unemployment Insurance Benefits Under State Law

The July 16, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is affirmed. Claimant voluntarily quit the claimant's employment with the employer on October 1, 2019. Unemployment insurance benefits are denied until the claimant has worked in and earned wages for insured work equal to ten times the claimant's weekly benefit amount after the claimant's separation date, and provided the claimant is otherwise eligible.

Pandemic Unemployment Assistance ("PUA") Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance ("PUA") that may provide up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive an additional \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation ("FPUC") program if the individual is eligible for PUA benefits for the week claimed. The FPUC additional \$600 payment per week ends as of July 25th in Iowa. This means the \$600 weekly additional benefit will stop and at this time, no extension or change to the program has been made by Congress at this time. This does mean that you will see a corresponding decrease in your weekly benefit amount. The FPUC payments are not a state benefit and Iowa is unable to make any changes to the availability of this benefit. If a change takes place to this benefit in the future, IWD will share on the IWD website and social media. This decision does not address whether the claimant is eligible for PUA. If the claimant wishes to receive PUA benefits, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below:

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently 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 under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.** This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.



Heather L. Palmer
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September 10, 2020
Decision Dated and Mailed

hlp/scn