

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVEN HARPER
Claimant

MILLENNIUM CONCRETE LLC
Employer

APPEAL 21A-UI-09886-ML-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/03/21
Claimant: Appellant (5)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 30, 2021 (reference 01) unemployment insurance decision that found claimant was not eligible for benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 21, 2021. The claimant, Steven Harper, participated personally. Claimant's friend and now co-worker, Larry Bell, also provided testimony on claimant's behalf. The employer, Millennium Concrete, LLC, participated through Hollie Trenary.

Claimant's Exhibit 1 was offered and received into the evidentiary record.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time as a laborer. Claimant was employed from July 30, 2020, until January 21, 2021, when the employer asserts claimant abandoned his job. Claimant's immediate supervisors were Logan Benge and Gage Olson.

Claimant last physically worked for the employer on January 21, 2021, when he poured concrete for the employer in Joslin, Illinois. Claimant left the Joslin jobsite early to take care of a personal issue. Once the Joslin, Illinois job ended, Mr. Olson told claimant he did not have any additional in-state jobs lined up. Claimant told Mr. Olson that he had the ability to work on jobs that were out of state; however, he needed to obtain permission from his parole officer in order to do so.

According to the employer, claimant would have been expected to travel with Mr. Olson and his crew to the next jobsite once the Joslin, Illinois job had ended. The employer asserts that continuing work was available had claimant not quit.

Claimant did not reach out to the employer to provide updates while he was dealing with his personal issue. The claimant did not reach out to Mr. Olson or the employer again until March 2, 2021, when he asked if out of town work was the only work still available. (See Exhibit 1, page 1) When Mr. Olson did not respond, claimant followed up on March 4, 2021, and asked, "So what's goin on?" Mr. Olson responded, "I have to talk to Luke I will let you know. But yes work is all out of town right now." (Ex. 1, p. 1) Mr. Olson asked if claimant would be willing to work out of state and claimant replied, "Yes." *Id.*

Mr. Olson did not participate in the evidentiary hearing, however, he did provide a report to Ms. Trenary regarding claimant's separation from employment. Mr. Olson considered claimant to be a "flaky" employee. According to Mr. Olson, claimant left at least two jobsites early because he had to take care of personal issues. Mr. Olson's statement asserts that claimant left the Joslin jobsite early, and the employer did not hear from claimant again until March, 2021. According to Mr. Olson, claimant was told, "if you leave, you leave."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit employment without good cause attributable to the employer.

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, there is no evidence the employer discharged claimant. Rather, the evidentiary record establishes that claimant voluntarily quit his employment. As such, claimant must prove that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

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 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. No intent-to-quit requirement was added to rule 871—24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871—24.26(6)(b) but not 871—24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese*, 389 N.W.2d at 680. "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.* Where multiple reasons for the quit, which are attributable to the employment, are presented the agency must "consider that all the reasons combined may constitute good cause for an employee to quit, if the reasons are attributable to the employer". *McCunn v. Emp't Appeal Bd.*, 451 N.W.2d 510 (Iowa App. 1989) (citing *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985)).

It is undisputed that claimant left the Joslin, Illinois jobsite early on January 21, 2021, to tend to a personal matter.

Iowa Admin. Code r. 871-24.26(16) 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:

(16) The claimant left employment for a period not to exceed ten working days or such additional time as was allowed by the employer, for compelling personal reasons and prior to leaving claimant had informed the employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist or at the end of ten working days, whichever occurred first, the claimant returned to the employer and offered to perform services, but no work was available. However, during the time the claimant was away from work because of the continuance of this compelling personal reason, such claimant shall be deemed to be not available for work.

Iowa Admin. Code r. 871-24.25(20) 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 "j," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days

Claimant left work for a compelling personal reason on January 21, 2021. Prior to leaving, claimant informed the employer of such compelling personal reason. However, claimant did not

return to the employer and offer to perform services once his compelling personal reason ceased to exist or at the end of ten working days. Claimant did not return to the employer and offer to perform services until March 2, 2021. While claimant had good personal reasons for leaving the jobsite on January 21, 2021, he did not return to the employer and offer his services within ten working days. When claimant did not contact the employer within ten working days, the employer was justified in considering claimant to have abandoned his position. Claimant's separation from employment was not for a good cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The March 30, 2021 (reference 01) unemployment insurance decision is modified to reflect January 21, 2021, as the date claimant voluntarily quit. The claimant voluntarily quit without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.



Michael J. Lunn
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July 19, 2021
Decision Dated and Mailed

mjl/lj