

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAYVON A. DUNBARWILSON
Claimant

APPEAL 24A-UI-00919-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT HEINZ FOODS COMPANY LLC
Employer

**OC: 09/17/23
Claimant: Appellant (3)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On January 23, 2024, the claimant/appellant filed an appeal from the January 17, 2024, (reference 05) unemployment insurance decision that allowed benefits from the date of termination until the date of the resignation due to the employer terminating claimant due to claimant's resignation. Claimant was allowed benefits from December 24, 2023, through December 30, 2023. The parties were properly notified about the hearing. A telephone hearing was held on February 13, 2024. Claimant participated. The employer did not call in to participate.

ISSUE:

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Is the Claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 16, 2023. Claimant last worked as a full-time production worker.

Claimant lives in Davenport and drives to Muscatine to work. Claimant last performed work for the employer on December 15, 2023. On or about December 15, 2023, claimant was pulled over and was no longer allowed to drive due to not having insurance for his vehicle.

Claimant called the employer on Monday, December 18, 2023, and let them know he would not be at work due to his transportation issues. On December 19, 2023, claimant again called the employer to notify them he would not be at work due to his transportation issues.

The employer has an attendance policy where employees received two points for each absence. Employees are allowed twelve points before they are discharged for attendance. As of December 19, 2023, claimant had two attendance points.

During the phone call on December 19, 2023, the supervisor informed claimant that he should resign so he would not get pointed out for his attendance due to his transportation issues. The employer notified claimant that if he resigned he could apply to work in Davenport and he would not have to wait six months to reapply due to being discharged. Claimant submitted his resignation that was effective immediately. Claimant did not receive any warnings for his attendance and they did not inform him he would be discharged immediately if he did not resign immediately. Claimant had the opportunity to continue working for the employer if he had transportation to work.

Claimant received his paycheck and got insurance for his vehicle on December 21, 2023. Claimant no longer has transportation issues since he got his insurance. Claimant has reapplied to work for the employer and has not been rehired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the 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.

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:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leave.

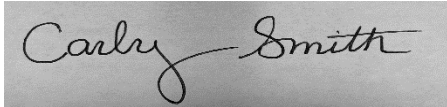
The Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. See *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993) (adapting good faith standard from *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988)) see also *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).

On November 19, 2023, claimant called in to notify the employer he would be absent due to his transportation issues. Since claimant was having transportation issues, the supervisor told claimant he should resign so he does not get discharged for accumulating too many attendance points. The supervisor informed claimant that if he got discharged then he would have to wait six months to reapply. At the time claimant called in on December 19, 2023, he had two attendance points and could accumulate up to twelve attendance points. Claimant wanted to eventually work in Davenport and he did not want to be discharged so he resigned immediately. The termination

was not imminent and the employer was not giving claimant an ultimatum to quit at the time claimant resigned. Claimant still had a job if he showed up for work. As a result claimant voluntarily quit his employment without good cause attributable to the employer. Benefits are denied effective December 17, 2023.

DECISION:

The January 17, 2024 (reference 05) unemployment insurance decision is modified in favor of the respondent. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are denied effective December 17, 2023.

A rectangular box containing a handwritten signature in cursive script that reads "Carly Smith".

Carly Smith
Administrative Law Judge

February 15, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.