

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BYRON A LITTLETON
Claimant

DIANE LITTLER
Employer

APPEAL 17A-UI-06433-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/19/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 15, 2017, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 17, 2017. Claimant participated. Employer did not participate.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assembler from November 2015, and was separated from employment on June 2, 2017, when he quit.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies. The policy also provides that an employee will be warned as points are accumulated (verbal warning, written warning, second written warning, and written warning with suspension), and will be discharged upon receiving five points in a rolling calendar year. The employer requires employees contact the employer and report their absence prior to the start of their shift. Claimant was aware of the employer's policy.

Prior to May 31, 2017, claimant had missed approximately a week of work and he just came back to work around May 31, 2017. On May 31, 2017, a line leader approached claimant while he was at work and told him that he should quit if he was going to be gone all the time. Claimant did not respond to the line leader. Claimant then went to his supervisor and reported the comment his line leader made to him. Claimant's supervisor told him that it was a he said she said incident and there was nothing the supervisor could do. Claimant told his supervisor that he was going to go home for the day. Claimant's supervisor told him that he was at four points because the employer forgave one point. Claimant's supervisor had him fill out a sheet before he left. Claimant then left for the day.

On June 1, 2017, claimant returned to work and a different employee made comments about him being gone all the time. Claimant then went and told his supervisor that he was not going to deal with it anymore. Claimant's supervisor told him that it was a he said she said incident and there was nothing the supervisor could do. Claimant's supervisor had him fill out a sheet before he left. Claimant then left for the day.

On June 2, 2017, claimant went to the employer and he told his supervisor that he was quitting. Claimant's supervisor told him that he was sorry that it was not going to work out. Claimant did not report any of the comments from the line leader or the other employee to the human resources department before he quit. There was a human resources employee claimant could have reported the incidents too.

The employer gave claimant a verbal and written warning due to his absenteeism prior to his discharge. The employer had not given claimant a second written warning or a written warning with suspension. Over approximately three months, claimant missed approximately fifteen days of work due to his back.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer. Benefits are denied.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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(6) 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:

(6) The claimant left as a result of an inability to work with other employees.

Iowa Admin. Code r. 871-24.25(21) 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.

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). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

Claimant quit his employment because he did not like the comments made by his line leader and another employee about his absences. Claimant has not demonstrated that a reasonable person would find the work environment detrimental or intolerable. See *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). Although claimant may not have appreciated the comments by his line leader or the other employee about his absences, the comments would not be offense to the average person. Instead, claimant has demonstrated there was a personality conflict between himself and his line leader and the other employee. However this is not a good cause reason to quit that is attributable to the employer. While claimant's leaving the employment 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 must be denied.

DECISION:

The June 15, 2017, (reference 03) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to employer. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs