

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JON D KIRGIS
Claimant

THRIVE TOGETHER LLC
Employer

APPEAL 21A-UI-10969-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (4)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 25, 2021 (reference 03) unemployment insurance decision that denied benefits to the claimant based on him voluntarily quitting work without good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on July 7, 2021. Claimant participated personally. The employer did not participate. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-10970-DB-T; 21A-UI-10971-DB-T and 21A-UI-10972-DB-T.

ISSUE:

Did claimant voluntarily leave the employment 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 worked at this employer's restaurant as a part-time cook for approximately one month. His employment ended in January of 2019 when he took a full time position as a chef with B P O E. The only reason that the claimant voluntarily quit his position with this employer was to accept a better position with B P O E.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.5(1)a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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). 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).

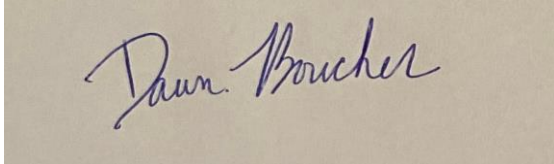
Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

In this case, the claimant voluntarily quit for the sole purpose of accepting better employment. As such, the claimant's voluntarily quit was not disqualifying because he quit for the sole purpose of accepting an offer of other employment. Benefits are allowed, provided the claimant is otherwise eligible. No charges shall accrue to the account of Thrive Together LLC.

DECISION:

The March 25, 2021 (reference 03) unemployment insurance decision is modified in favor of the respondent. The separation from employment with this employer is not disqualifying because claimant voluntarily quit for the sole purpose of accepting better employment with B P O E. Benefits are allowed, provided the claimant is otherwise eligible. No charges shall accrue to the account of Thrive Together LLC.



Dawn Boucher
Administrative Law Judge

July 16, 2021
Decision Dated and Mailed

db/mh