

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRIAN J EMERSON**  
Claimant

**IOWA BEVERAGE SYSTEMS INC**  
Employer

**APPEAL 21A-UI-03192-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On January 15, 2021, Brian J. Emerson (claimant) filed an appeal from the January 13, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with Iowa Beverage Systems, Inc. (employer) for a non-work related illness or injury. The parties were properly notified about the hearing held by telephone on March 18, 2021. The claimant participated personally. The employer participated through Joe Standefer, Sales Manager, and Trevor Gosselink, VP of Finance. The claimant's Exhibit A was admitted into the record without objection.

**ISSUE:**

Did the claimant voluntarily quit employment with good cause attributable to the employer or did the employer discharge the claimant for job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an Account Manager beginning on July 17, 2020, and was separated from employment on November 17. The employer distributes beverages to grocery stores and other retail outlets. All of their positions require someone have the ability to lift at least 50 pounds.

As an account manager, the claimant traveled to the employer's accounts to verify they received the necessary product and ensure it was properly merchandised. When the claimant was hired, he was told that he would be working around 50 hours a week during training, but could work to get that down to 40 hours a week. The claimant would start at a certain time and end when the work was done. The claimant's job also required him to type on an iPad for approximately 20 hours a week.

Two weeks before the end of the claimant's employment, he met with Joe Phillipson, Area Manager, and Joe Standefer, Sales Manager. They told the claimant they had learned he was looking for another job and asked him to think about what he wanted to do going forward. The

following day, the claimant met with Phillipson. He told Phillipson that he could no longer do the job due to pain in his wrists and asked if another job was available. Phillipson said there were no other jobs and issued the claimant a written warning for subpar performance. The claimant told Phillipson that his last day would be the day before Thanksgiving.

On November 16, the claimant saw his doctor who determined he had a non-work related injury to his wrist. The doctor restricted his ability to lift and advised he take breaks while typing. The claimant did not present this information to the employer. When the claimant returned to work that day, he notified Phillipson that he was experiencing too much pain to work out his notice. Phillipson asked him to work until November 17, which the claimant did. On November 17, the claimant returned his company owned property to Trevor Gosselink, VP of Finance.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code section 96.5 provides, in relevant part:

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:

...

d. The individual left employment because of illness, injury, or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury, or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

...

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25 provides, in relevant part:

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:

...

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

...

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- a. Obtain the advice of a licensed and practicing physician;
- b. Obtain certification of release for work from a licensed and practicing physician;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- d. Fully recover so that the claimant could perform all of the duties of the job.

Iowa Admin. Code r. 871-24.26(6) provides, in relevant part:

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:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or

disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left his employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It 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).

The employer has met the burden of proof to show the claimant voluntarily left employment. While there were some performance issues, the employer was counseling the claimant on these issues and he had not been discharged. The claimant elected to leave employment.

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. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

Given the determination of the examining physician on November 16 that the injury was not work-connected, the claimant has not established that the medical condition was work related. Additionally, the claimant made the decision to leave before seeing his doctor and did not leave upon the advice of his physician. The claimant's decision to leave may have been for good personal reasons, but the claimant has not established that he left with good cause attributable to the employer under Iowa law. Benefits are denied.

Even if the injury were work-connected, benefits would still be denied. The claimant has to establish that it was impossible for him to continue in the position due to a serious danger to his health. The medical information obtained prior to the claimant leaving employment indicates his doctor felt he could do the job with a lifting restriction and taking breaks while typing. The claimant did not request these accommodations prior to making the decision to leave his employment.

**DECISION:**

The January 13, 2021, reference 01, unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



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Stephanie R. Callahan  
Administrative Law Judge

March 23, 2021  
Decision Dated and Mailed

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