

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVE B PICKAR
Claimant

CRAMER AND ASSOCIATES INC
Employer

APPEAL 22A-UI-03653-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/21/21
Claimant: Appellant (4R)**

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

STATEMENT OF THE CASE:

On January 25, 2022, Dave Pickar (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated January 17, 2022 (reference 01) that denied unemployment insurance benefits based on a finding claimant voluntarily quit work on November 3, 2021 for personal reasons.

A telephone hearing was held on March 10, 2022. The parties were properly notified of the hearing. The claimant participated personally. Cramer and Associates Inc (employer/respondent) participated by Payroll Manager Lori Starkey. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

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

Claimant worked for employer full time as a supervisor. Claimant's first day of employment was in May 2001. The last day claimant worked on the job was November 4, 2021. Claimant was laid off at that time due to a lack of work. Work was still unavailable to claimant when he retired effective December 31, 2021. There was continuing work available had claimant not retired.

Claimant filed a claim for benefits effective November 21, 2021 and filed weekly claims through the benefit week ending January 8, 2022. Claimant received benefits in each week filed. The issue of whether claimant was totally, partially, or temporarily unemployed and able and available for work during those weeks has not yet been the subject of a fact-finding interview and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated January 17, 2022 (reference 01) that denied unemployment insurance benefits based on a finding claimant voluntarily quit work on November 3, 2021 for personal reasons is MODIFIED in favor of appellant.

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 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:

(24) The claimant left employment to accept retirement when such claimant could have continued working.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

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. 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). 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).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried his burden of proving the voluntary leaving was for good cause attributable to employer. Claimant voluntarily left employment to retire when continuing work was available. Claimant is therefore disqualified from benefits effective December 31, 2021, the date of separation. The decision is modified to reflect that was the date of separation rather than November 3, 2021.

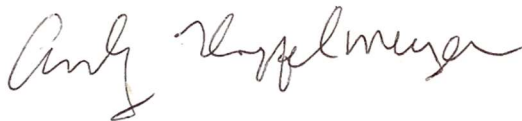
The issue of whether claimant was totally, partially, or temporarily unemployed and able and available for work during the weeks filed must be addressed and this matter is remanded to the Department to do so. The issue of whether claimant was overpaid benefits after the date of separation is also remanded for a determination.

DECISION:

The decision dated January 17, 2022 (reference 01) that denied unemployment insurance benefits based on a finding claimant voluntarily quit work on November 3, 2021 for personal reasons is MODIFIED in favor of appellant. Claimant's separation from employment on December 31, 2021 was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.

REMAND:

The issue of whether claimant was totally, partially, or temporarily unemployed and able and available for work during the weeks filed must be addressed and this matter is remanded to the Department to do so. The issue of whether claimant was overpaid benefits after the date of separation is also remanded for a determination.



Andrew B. Duffelmeyer
Administrative Law Judge
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March 18, 2022
Decision Dated and Mailed

abd/abd