

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SHANE D GERSTENBERGER
Claimant

APPEAL NO: 12A-UI-03739-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAWKEYE SANITATION INC
Employer

OC: 03/04/12

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Shane D. Gerstenberger (claimant) appealed a representative's April 5, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Hawkeye Sanitation, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 25, 2012. The claimant participated in the hearing. Ross Merritt appeared on the employer's behalf and presented testimony from two other witnesses, Chris Dandenover and Duane Southwick. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on March 13, 2006. He worked full-time as a thrower. His last day of work was February 27, 2012.

On February 27 the truck had some trouble starting, so the crew was a bit later than usual leaving the employer's base, but had left by about 7:00 a.m. Between 7:30 a.m. and 8:00 a.m. Dandenover, the assistant office manager, contacted the claimant by phone and informed him that he had been selected to report for a random drug test. The claimant responded, "I won't pass." However, Dandenover proceeded to make arrangements for Merritt, the owner, to come to pick up the claimant to take him to the test that afternoon, and a replacement to ride the truck with the driver, Southwick, was arranged.

Later that morning the claimant sent two text messages to Merritt. While it is not clear in which order the texts came, one said, "Well, good luck finding a replacement for me. I was just now told I have to pee today. The other said, "Well, don't worry about doing all that driving just to try and fire me. I quit." The claimant later told Southwick to tell the office that he had quit, and left the truck, having arranged for his wife to meet him and pick him up.

The claimant had some prior issues and concerns regarding safety issues with Southwick's driving, and had made complaints to the employer. At the hearing, the claimant asserted that there had been another incident that morning in which Southwick turned a corner too tight and fast, jeopardizing the claimant's position on the back of the truck, and that this was the reason that he quit on February 27. However, Southwick denied that there had been any incident that morning.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Where a claimant gives several different reasons for leaving employment, all stated reasons which might have combined to give the claimant good cause to quit must be considered in determining whether any of those reasons alone or in combination constituted good cause attributable to the employer. *Taylor v. IDJS*, 362 N.W.2d 534 (Iowa 1985). Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a belief the employee would be fired, where the employer has not made a decision to discharge, is not good cause for quitting. 871 IAC 24.25(33).

The claimant asserts that he quit because of a concern regarding his safety, rather than because he was being required to submit to drug testing and believed he would fail and be fired. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant has not satisfied its burden to establish by a preponderance of the evidence that he quit because of the safety concern, rather than the concern about the drug test. While there had been some concerns in the past, specifically in about September 2011, the claimant did not establish that there was some new incident on February 27. Southwick denied that there had been any incident that morning; and, further, in the claimant's text messages to the employer he made no reference to there being any safety issue that day but only referred to quitting in the context of the employer's driving to get him to do the drug test and "trying to fire him." The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's April 5, 2012 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of February 27, 2012, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw