

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONALD L PINNEY
Claimant

SIOUX CITY FOUNDRY CO
Employer

APPEAL 22A-UI-06075-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/13/22
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On March 8, 2022, Donald Pinney (claimant/appellant) filed a timely appeal from the Iowa Workforce Development (“IWD”) decision dated March 3, 2022 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that he was discharged on February 14, 2022 for using profane language on the job.

A telephone hearing was held on April 19, 2022. The parties were properly notified of the hearing. The claimant participated personally. Sioux City Foundry Co (employer/respondent) participated by CEO Andrew Galinsky. Payroll Administrator Melissa Hamman participated as a witness for employer.

No exhibits were offered or admitted. Official notice was taken of the administrative record.

ISSUES:

- I. Was there a disqualifying separation from employment?

FINDINGS OF FACT:

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

Claimant began working for employer on February 4, 2008. Claimant worked for employer as a full-time salaried maintenance employee. Claimant’s immediate supervisor was Manager Chris Taylor. The last day claimant worked on the job was February 14, 2022.

Mr. Galinsky called claimant into his office on February 14, 2022 to confront him about performance issues, including claimant taking what appeared to be an extended break that morning. Claimant was defensive when confronted with the allegation that he took an extended break. He then expressed that he did not think Mr. Galinsky was not available enough to assist him with maintenance-related matters. This in turn upset Mr. Galinsky, who felt he always made himself available and in any event was not claimant’s supervisor.

In short, both men felt disrespected by the other and then cuss words were exchanged. Neither party recalls what specifically was said until Mr. Galinsky finally yelled at claimant to "get the fuck out of my office." Other employees were present in the office area when this occurred.

Claimant left Mr. Galinsky's office as directed. He did not return to work but instead went home without informing employer of his intent to do so. Mr. Galinsky later learned that claimant had gone home rather than returned to work. Claimant was scheduled to work the following four days – February 15 through 18 – but did not appear for work on any of those days. Coworkers told claimant during this time that he was not allowed back on the property. However these individuals were not members of management and claimant did not contact employer to clarify his status.

There was no further contact between the parties until late morning on February 18, when Mr. Galinsky sent claimant a text message. Mr. Galinsky indicated they both behaved poorly during the February 14 meeting and suggested they meet to talk next week. Mr. Galinsky closed the message with "if not then we will continue as is but that's not my goal." Claimant did not respond to the text message and there was no further communication between the parties after that.

Claimant testified that he did not return to work after the February 14, 2022 meeting because he believed he had been discharged. However he acknowledged that he was never told he was discharged. He also acknowledged that he did not return to work or respond to the text message because he was angry following the February 14, 2022 incident. Mr. Galinsky testified that he did not intend to discharge claimant and expected he would continue working after the meeting. He testified there was continued work available for claimant after the February 14, 2022 incident.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated March 3, 2022 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that he was discharged on February 14, 2022 for using profane language on the job is REVERSED.

As an initial matter the administrative law judge finds claimant was not discharged but voluntarily left employment on February 14, 2022. Claimant was not expressly discharged and instead assumed as much without seeking clarification. Mr. Galinsky's text message to claimant and his credible testimony that continued work was available to claimant also support that he was not discharged. Claimant's failure to seek clarification as to his status, to return to work as scheduled, or to respond to Mr. Galinsky's text message seeking to salvage the employment relationship after the fact also demonstrates his intent to separate from employer. As such this matter will be analyzed as a voluntary leaving.

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. 871-24.26 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:

- (4) The claimant left due to intolerable or detrimental working conditions.

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).

The administrative law judge finds claimant has carried his burden of proving the voluntary leaving was for good cause attributable to employer. While claimant was not without some fault and his conduct may have risen to the level of disqualifying misconduct, claimant was not discharged. He resigned because of Mr. Galinsky's conduct toward him. A reasonable person would find Mr. Galinsky's conduct on that date to be so intolerable or detrimental as to justify resignation. The severity of the conduct is heightened because other employees were present when it occurred; because Mr. Galinsky is the owner of the company; and because Mr. Galinsky has ultimate supervisory authority over claimant such that there was no one else claimant could appeal to for correction. Mr. Galinsky's attempt to mend fences several days later was too little too late and claimant had no duty to return to work at that point as he had already resigned with good cause attributable to employer.

DECISION:

The decision dated March 3, 2022 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that he was discharged on February 14, 2022 for using profane language on the job is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account is subject to charge.



Andrew B. Duffelmeyer
Administrative Law Judge

April 21, 2022
Decision Dated and Mailed

abd/abd