

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PETE CRUZ

Claimant

APPEAL NO. 23A-UI-06503-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 05/28/23

Claimant: Appellant (5)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On June 27, 2023, Pete Cruz (claimant) filed a timely appeal from the June 23, 2023 (reference 01) decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant was discharged on November 23, 2022 for excessive unexcused absenteeism. After due notice was issued, a hearing was held on July 17, 2023. Claimant participated. Steve Volle represented the employer until about 10:20 a.m., when the employer's line disconnected from the hearing conference call. The employer was unable to reconnect to the appeal hearing. After the claimant and the administrative law judge waited 15 minutes for the employer to reconnect to the hearing, the administrative law judge and the claimant proceeded with the hearing. The employer did not rejoin the hearing. Exhibit A, the appeal letter, was received into evidence.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

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

Pete Cruz (claimant) began his employment with Advance Services, Inc. in May 2022 and last performed work for the employer on November 23, 2022. Throughout the employment, the claimant worked in a full-time, temporary work assignment at a Syngenta Seeds in Lone Tree, Iowa. Marianne Longbine is the ASI Onsite Manager at the Syngenta facility and was the claimant's supervisor. At the start of the assignment, Ms. Longbine told the claimant that once the harvest season was done, she would explore having the claimant reassigned to the warehouse. The employment did not progress to the claimant working in the warehouse. From the start of the assignment until harvest began in August 2022, the claimant worked five days a week, Monday through Friday. When harvest began in August 2022, the claimant assisted with the harvest and commenced working seven days a week. The claimant continued to work seven days a week through November 23, 2022.

On the claimant's last day in the employment, the claimant notified Ms. Longbine that his father-in-law had passed away in Texas and that the claimant needed to travel to Texas for the funeral. Ms. Longbine approved the claimant's departure from the assignment for this purpose. At the time the claimant left the employment, the funeral had not yet been scheduled.

On November 23, 2022, the claimant and his wife left Iowa for Texas.

The claimant's father-in-law's funeral took place on November 29, 2022 in Texas.

On November 30, 2022, the claimant notified Ms. Longbine that he needed to remain in Texas indefinitely due to his mother-in-law's mental condition. The claimant made additional contact with Ms. Longbine to update the employer on his continued need to remain in Texas. At some point, Ms. Longbine told the claimant that he no longer needed to provide updates and that he should just contact Ms. Longbine about returning to the employment when he returned to Iowa.

The claimant did not return to Iowa until February 2, 2023. The claimant asserts that it was necessary for his wife to remain with her mother in Texas to assist with transporting her mother to medical appointments. The claimant asserts it was necessary for him to remain with his wife because they had traveled to Texas together. A reasonable person would conclude the claimant could have returned to Iowa in a timely manner while leaving his wife in Texas to assist her mother.

On February 4, 2023, the claimant attempted to contact Ms. Longbine by telephone to let her know he was ready to return to the employment. The claimant called and left a voicemail message for Ms. Longbine, but did not receive a response. The claimant did not return to perform additional work for ASI.

Iowa Workforce Development records (WAGEA) reflect that the claimant's last Iowa wages were paid during fourth quarter of 2022 and that there are no more recent Iowa wages.

The claimant established an original claim for benefits that was effective May 28, 2023.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 871-24.25.

Iowa Code section 96.5(1)(c) and (f) 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

...

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

Iowa Admin. Code r. 871-24.26(8) provides:

This separation is not considered to be a voluntary quit.

(8) The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or marriage.

The weight of the evidence in the record establishes a voluntary quit without good cause attributable to the employer. The claimant voluntarily went off work effective November 23, 2022. The claimant had a compelling reason to temporarily remove himself from the

employment at that time. The claimant's purpose for going off work as of November 23, 2022 was a need to accompany his spouse to Texas for his father-in-law's funeral. The funeral occurred on November 29, 2022. The claimant elected not to return to the employment within 10 working days. Rather, the claimant concluded he needed to remain with his spouse while she assisted the claimant's mother-in-law. The weight of the evidence establishes a reasonable basis for the claimant's spouse to remain in Texas to assist her mother, but does not establish a reasonable basis for the claimant also to remain in Texas, away from the employment, for a period exceeding two months. Accordingly, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The June 23, 2023 (reference 01) decision is MODIFIED without change to the eligibility or employer liability determination. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

July 20, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.