

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCOTT A KLINE
Claimant

BARILLA AMERICA INC
Employer

APPEAL 21A-UI-04385-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/29/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Scott A Kline, the claimant/appellant filed an appeal from the January 26, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 31, 2021. Mr. Kline participated and testified. The employer participated through Kelly Gipple, human resources specialist. Claimant's Exhibit A was admitted into evidence.

ISSUE:

Did Mr. Kline voluntarily 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: Mr. Kline began working for the employer on April 8, 2019. He worked as a full-time gluten free technician. His last day at work was August 11, 2020.

On October 3, 2019, Mr. Kline was charged with operating while intoxicated. He was scheduled to go to court and then an alcohol treatment program on June 11, 2020. On May 20, 2020, Mr. Kline sent an email to Piper Richardson in the employer's human resources office asking for time to talk about him using Family Medical Leave Act (FMLA) leave while he was in alcohol treatment. Ms. Richardson responded the next day telling Mr. Kline that she would need a fax number for the facility he was going to so they could start on the paperwork.

On July 30, Mr. Kline asked Ms. Richardson via email to send the FMLA paperwork to his attorney. The next day, Ms. Richardson told Mr. Kline via email that the employer does not send FMLA paperwork via email due to the sensitive nature of it and she asked for a fax number. About four hours later, Ms. Richardson sent the FMLA paperwork to Mr. Kline via email but not his attorney. Ms. Richardson told Mr. Kline that he must return the paperwork within 15 days and that he should follow up with Lisa Atchinson-Charleston, someone else in the human resources office, since August 7 would be Ms. Richardson's last day working for the employer.

Mr. Kline's court date was pushed back to August 13. Mr. Kline informed the employer of the new court date. Mr. Kline was not scheduled to work on August 12 and 13. He was scheduled to work on August 14, 15 and 16. Mr. Kline told the employer that he would not be able to work those days since he planned to take a plea deal in which he would go to Fort Des Moines for alcohol treatment immediately his court hearing. Mr. Kline had no paid-time-off available to him at that time.

On August 12 Mr. Kline texted Ms. Atchinson-Charleston asking to talk about using FMLA leave and figuring out how to keep his job. Ms. Atchinson-Charleston did not respond. Mr. Kline texted Ms. Atchinson-Charleston again on August 13 giving her his mother's contact information and telling her that she could contact his mother if she could not reach him. Ms. Atchinson-Charleston did not respond. After his court hearing on August 13, Mr. Kline did not go to Fort Des Moines. He was sent to the Polk County Jail where he was told he had to quarantine for 14 days due to the COVID-19 pandemic.

On August 15, a friend of Mr. Kline's sent an email to Mr. Kline's supervisor on his behalf letting the employer know that he is in the Polk County Jail for two weeks and that he plans to have return the FMLA paperwork as soon as he can. Mr. Kline's supervisor did not respond. On August 18, the same friend of Mr. Kline's sent an email to Mr. Kline's supervisor on his behalf letting the employer know that he is resigning because he was still in quarantine and he was unsure when he would be able to get to the FMLA paperwork. On August 24 Mr. Kline's supervisor responded to Mr. Kline's friend thanking her for filling him in on Mr. Kline's status. Mr. Kline never submitted the FMLA paperwork to the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Kline's separation from the employment was without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

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:

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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant

who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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). 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).

In this case, Mr. Kline offered his resignation via his friend's email to the employer on August 18, 2020. The employer accepted his resignation on August 24. The administrative law judge understands Mr. Kline's frustration with the employer not responding to him reaching out to try to save his job. However, Mr. Kline's leaving was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The January 26, 2021, (reference 01) unemployment insurance decision is affirmed. Mr. Kline voluntarily left his 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.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

April 8, 2021
Decision Dated and Mailed

dz/scn