

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CONNOR T KEENAN
Claimant

CUSTOM INSTALL SOLUTIONS LLC
Employer

APPEAL 20A-UI-09847-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 12, 2020, (reference 02) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on September 23, 2020. The claimant, Connor T Keenan, participated and testified. Rich Davis testified on behalf of claimant. The employer, Custom Install Solutions LLC, participated and testified through owner Dustin Mick. Heather Johnson, Residential Operations and Ryan Nemmers, Operations Manager also testified on behalf of the employer.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time beginning February 3, 2020 as a call center associate in the 12 to 8 pm time slot. The date of separation was March 15, 2020, when he voluntarily quit.

Dustin Mick testified that the company had laid off several employees on March 15, 2020. The claimant was not going to be laid off. The claimant was scheduled to be the only employee covering the 12 to 8 pm time slot. Ryan Nemmers testified that he and Heather Johnson called the claimant to confirm he could cover the 12 to 8 pm shift since they were laying off the other employees. Claimant told the employer he was not able to work because he did not have reliable transportation to get to work. Mr. Nemmers testified that the claimant verbally resigned over the phone because he was unable to get to work. Ms. Johnson also testified that she was on the call with the claimant on March 15 when the claimant verbally resigned due to his lack of transportation to physically get to work.

Rich Davis testified that on March 15, many people were laid off from the company.

Claimant testified that he did not have reliable transportation on March 15, 2020, however, he denies that he verbally resigned during his phone call with Ryan Nemmers and Heather Johnson on March 15, 2020. Claimant testified that he was told his position was terminated on March 15, 2020 due to the Covid-19 pandemic during his phone call with Ryan Nemmers and Heather Johnson.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code §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 Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

First it must be determined whether claimant quit or was discharged from employment. A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

The decision in this case rests, at least in part, upon the credibility of the parties. The issue must be resolved by an examination of witness credibility and burden of proof. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds that the employer's version of events is more credible.

Claimant had an intention to quit and carried out that intention by not reporting to work after March 15, 2020. On March 15, 2020, claimant told his employer he did not have transportation and was not able to physically get to work. Two employees, Ryan Nemmers and Heather Johnson confirmed the phone conversation consisted of the claimant submitting his verbal resignation.

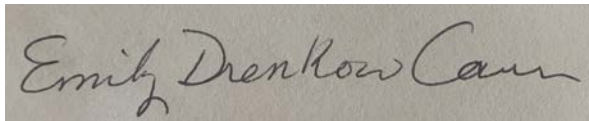
Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

Lack of reliable transportation is a personal responsibility that is not attributable to the employer. 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 submitted his verbal resignation on March 15, 2020 because he did not have reliable transportation to get to work.

Claimant's leaving the employment was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). You will need to apply for PUA to determine your eligibility under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION: The August 12, 2020 (reference 02) unemployment insurance decision is affirmed. Claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

A handwritten signature in cursive script, reading "Emily Drenkow Carr", written in dark ink on a light-colored, textured background.

Emily Drenkow Carr
Administrative Law Judge

September 30, 2020
Decision Dated and Mailed

ed/scn