

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREW J FRANKS
Claimant

AT&T MOBILITY SERVICES LLC
Employer

APPEAL 21A-UI-09725-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/21/21
Claimant: Appellant (1)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On April 7, 2021, the claimant/appellant filed an appeal from the March 30, 2021, (reference 01) unemployment insurance decision that disallowed benefits based on claimant voluntarily quitting for personal reasons. The parties were properly notified about the hearing. A telephone hearing was held on June 17, 2021. Claimant personally participated in the hearing. Employer participated through employer representative Tanis Minters. Laura McArthur was called as the Employer's witness.

ISSUE:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April 20, 2020. Claimant last worked as a full-time customer service representative. Claimant was separated from employment on February 18, 2021, when he submitted his written resignation.

Claimant began experiencing some health issues and did not work after October 13, 2020. Claimant's illness was pre-existing and was not caused or aggravated by the employment. Claimant's physician advised the claimant not to work and put him on a work restriction. Claimant was on short term disability from Nov. 6-Dec. 10, 2020. Claimant's doctor restricted claimant's work for three months. At the beginning of January 2021 claimant became aware that his disability claim had not been approved for the additional two months. Claimant's doctor cleared him to return to work on or about January 6, 2021. Claimant was fully recovered so the claimant could perform all the duties of the job.

The employer has a progressive points absenteeism policy where they assign points for absences. The employer has a company accommodation program where employees can apply to request absences from work be determined to be protected days that do not count towards the

points accumulated in the absenteeism policy. Prior to October 13, 2020, claimant had 7 ½ points accumulated. The company can terminate employees if they reach 8 points. The claimant had requested an accommodation for some of his points to be forgiven for the period between October 14, 2020-November 5, 2020, but these accommodations were rejected due to the paperwork not being done correctly. Claimant's physician attempted to request the accommodation three times but claimant was rejected each time. The accommodation request was not an accommodation to the claimant's job position or job duties but a company program that forgives attendance points.

When the claimant was cleared for work around January 6, 2021, he did not immediately return to work. Claimant was concerned about returning to work because he was concerned employer would fire him for the accumulation of points he had earned for being absent from the job. Claimant did not apply for accommodations in the employer's accommodation program for his absences after December 11, 2020. Claimant had conversations with other employees stating that employer would allow him to return to work for two weeks and then they would terminate him for being over the allotted absentee points.

On February 17, 2021, claimant had a conversation with Ms. McArthur expressing his concern about returning to work and his accumulation of attendance points and being terminated. Claimant had made no attempts to return back to work since his January 6, 2021 clearance to return to work. Ms. McArthur informed claimant that if he did not return to work then it would be considered job abandonment and he would be terminated. Ms. McArthur told claimant that it would look better with the company if he resigned instead of being terminated. Claimant thought his odds of returning to the company in the future would be improved by resigning. During the phone call claimant verbally told the employer he would be resigning. On February 18, 2021, claimant went to work and submitted a written resignation.

At the time of claimant's resignation the employer still have work available for him and would have allowed him to return. Additionally the employer had a company review process that would have investigated and reviewed whether the absences would have counted towards his total point accumulation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant'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.

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).

Claimant left because he believe that he would be terminated due to violating the employer's absentee policy. Claimant believed it would look better to resign than being terminated from the employer. Claimant and employer agree that additional work was available to the claimant if he would have returned to work. Employer testified that if claimant was over the point system that there was a review process to determine if the claimant would have been terminated. Employer testified that this process would not have occurred until after the claimant returned to work. The claimant did not give the employer the opportunity to continue employing him. Claimant's voluntary quit was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The March 30, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant 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.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

June 30, 2021
Decision Dated and Mailed

cs/kmj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.