

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

VINCENT A HAACK
Claimant

APPEAL NO. 13A-UI-13115-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY CARE INC
Employer

OC: 11/03/13
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Vincent Haack filed a timely appeal from the November 26, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 17, 2013. Mr. Haack participated. Kelly Schneider represented the employer and presented additional testimony through Sid Bolton.

ISSUES:

Whether Mr. Haack's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a private social services agency that provides home and community based services (HCBS) to disabled clients. Vincent Haack was employed by Community Care, Inc., as a full-time Direct Support Professional from July 2013 and last performed work for the employer on October 23, 2013. Mr. Haack's usual work hours were 10:00 p.m. to 8:30 a.m., seven days on and seven days off. The work averaged out to 34 hours per week. Mr. Haack was assigned to work at a home located on 7th Street in De Witt. The home belonged to the parents of one of the three mentally disabled men who resided at the home. One of those clients was his own guardian and case manager. That client had contacted the employer to request Mr. Haack's removal from the home. The request for Mr. Haack's removal from the house followed an incident wherein Mr. Haack fell asleep during his shift and incidents wherein Mr. Haack's girlfriend, who also worked for the employer, would visit Mr. Haack at the clients' home.

Kelly Schneider, HCBS Supervisor, became Mr. Haack's immediate supervisor on October 14, 2013. On October 21, Ms. Schneider notified Mr. Haack that he was being removed from that home effective October 30, 2013. The employer did not identify to Mr. Haack who had requested his removal or why. The employer had other homes in De Witt, including one down the street from the house where Mr. Haack had worked. The employer also had homes in Maquoketa and in Davenport. Mr. Haack resided in Davenport throughout the period of employment. The employer had planned to place Mr. Haack in another home. During the conversation on October 21, 2013, Mr. Haack notified Ms. Schneider that he was giving his

two-week notice that he was quitting. Two weeks from October 21, 2013 would have been November 4, 2013. Mr. Haack cited as the sole reason for his quit the drive from Davenport. The commute was 25-35 minutes each way. Mr. Haack said it was too much of a problem to continue to drive from Davenport to De Witt. Based on Mr. Haack's quit notice, the employer decided there was no point in training Mr. Haack to work at another house during the five days of the employment that would follow Mr. Haack's day in the previously assigned home.

Mr. Haack did not return to work after October 23, 2013 because he had become incarcerated.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.26(1) provides:

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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

871 IAC 24.25(30), (16) 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:

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

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 871 IAC 24.25.

The evidence in the record indicates that Mr. Haack voluntarily quit the employment effective October 23, 2013. Mr. Haack's cites three reasons for his quit, but mentioned only one to the employer. The evidence indicates that Mr. Haack no longer wanted to work for the employer after he was notified he would be removed from the home where he had worked since the start of his employment. Given the nature of the employment, a reasonable person would expect from time to time that a client, or a client's family, would express a preference that would result in an employee in Mr. Haack's position being reassigned from one home to another. The employer had other homes in De Witt and additional homes located closer to Mr. Haack. There is no indication that the reassignment would have resulted in substantial changes in the conditions of the employment. The removal from the clients' home did not cause the quit to be for good cause attributable to the employment. The second basis for the quit, the one Mr. Haack mentioned to the employer, was the commute. The commute had been the same throughout and would not cause the quit to be for good cause attributable to the employment. Mr. Haack belatedly raises a third basis for the claim, and investigation of the employer's Medicaid billing. The weight of the evidence indicates that the issue was not a factor in the voluntary quit.

The evidence indicates that the employment ended early because Mr. Haack became incarcerated and was unavailable to report for work. The quit was effective October 23, 2013.

Mr. Haack voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Haack is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Haack.

DECISION:

The Agency representatives November 26, 2013, reference 01, decision is affirmed. 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 ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs