

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARCUS BROOKS

Claimant

APPEAL 21A-UI-13633-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THRIVE TOGETHER LLC

Employer

OC: 03/14/21

Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quit

Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 26, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on July 27, 2021. The claimant participated and testified. The employer did not participate.

ISSUE:

Was the separation a layoff, discharge for misconduct 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:

The claimant was employed part-time as a server from August 14, 2014, and was separated from employment on November 13, 2020, when he was laid off.

The claimant and the employer planned on transferring him from the Coralville restaurant to the Altoona restaurant in the fall of 2020. His final day at the Coralville restaurant was on October 22, 2020. The claimant was in regular correspondence with management at the Altoona location. In particular, he planned to begin his term of employment there on November 12, 2020.

On November 12, 2020, the claimant met with General Manager Dave Hintz. Mr. Hintz instructed the claimant to update the debt card he used to receive his wages because it was set to expire on January 1, 2021.

The claimant updated this card as instructed, but was not called to work at this new location, due to lack of work. Specifically, Polk County went from 85% capacity restrictions to 50% capacity restrictions around that time due to a resurgence in Covid19 infections. Mr. Hintz had also delegated hiring authority to a traveling general manager, Gayla Shaka. Ms. Shaka decided the claimant that he would only be brought on as on-call if overflow shifts were available.

Ms. Shaka left the Altoona restaurant in May 2021. The claimant was finally brought back shortly after Shaka left.

The claimant did not ever resign either orally or in writing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was merely transferred from the Coralville location to the Altoona location and then was laid off.

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:

(2) The claimant moved to a different locality.

Iowa Admin. Code r. 871-24.1 provides:

Definitions.

Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

(113) *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. [Emphasis added]

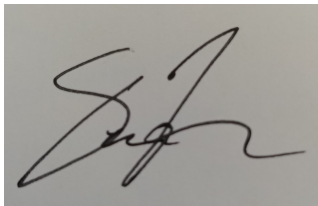
c. *Discharge*. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

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.

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). The claimant never demonstrated an intent to quit the employer's employ. He merely transferred from one location to another which is categorically excluded from the definition of a quit in Iowa Admin. Code r. 871-24.1(113)(b). When he attempted to establish employment at the other location, he was told there was a lack of work due to capacity limits. This falls under the definition of a layoff in Iowa Admin. Code r. 871-24.1(113)(a).

DECISION:

The May 26, 2021, (reference 01) unemployment insurance decision is reversed. The claimant was laid off due to lack of work. Benefits are granted, provided he is otherwise eligible.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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August 5, 2021
Decision Dated and Mailed

smn/kmj