

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANDREW SCOTT**  
Claimant

**APPEAL 18A-UI-08958-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOVERNMENT EMPLOYEES INSURANCE**  
Employer

**OC: 07/29/18  
Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Admin Code r. 871-24.25 – Voluntary Quit Without Good Cause  
Iowa Admin Code r. 871-24.26 – Voluntary Quit With Good Cause

**STATEMENT OF THE CASE:**

Andrew Scott, claimant, filed an appeal from the August 23, 2018 (reference 01) unemployment insurance decision that denied benefits because he quit work with Government Employees Insurance Co. due to a non-work related injury. The parties were properly notified of the hearing. A telephone hearing was held on October 11, 2018 at 8:00 a.m. Claimant participated. Employer participated through Christopher Hunter, Hearing Representative; Nicole Parks, Human Resources Compliance Specialist; and Lisa Galarraga, Sales Manager. Employer's Exhibit 1 was admitted.

**ISSUE:**

Whether claimant's separation was a 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: Claimant was employed full-time as a sales representative from July 5, 2016 until his employment ended on July 20, 2018. (Claimant Testimony) Claimant had a rotating schedule and generally worked from 9:00 a.m. until 5:30 p.m. (Claimant Testimony) Claimant's direct supervisor was Tom Zulock, Sales Supervisor. (Claimant Testimony)

On July 20, 2018, claimant sent his employer a written notice of resignation via email; claimant's resignation stated it would be effective July 23, 2018 at 5:00 p.m. (Exhibit 1; Claimant Testimony) Employer terminated claimant's employment effective July 20, 2018. (Claimant Testimony) Claimant worked a partial day on July 20, 2018. (Parks Testimony) Claimant was not scheduled to work July 21st or 22nd, but was scheduled to work July 23, 2018. (Parks Testimony).

Claimant's resignation states that he decided to pursue an opportunity in information technology. (Exhibit 1) Claimant suffers from a non-work-related illness that was aggravated by

his essential job duty of speaking on the phone. (Claimant Testimony) Claimant's physician recommended that Claimant not talk on the phone whenever his condition worsened. (Claimant Testimony) When Claimant's condition worsened he would begin coughing and was unable to speak; these coughing episodes could last as long as five minutes. (Claimant Testimony) When this occurred, claimant had to leave work and go to urgent care for treatment. (Claimant Testimony) Claimant was approved for and utilized medical leave for this illness. (Claimant Testimony) Claimant continues to have restrictions regarding the frequency and duration of telephone use. (Claimant Testimony)

Claimant's job was not in jeopardy and there was continuing work available for claimant if he had not quit. (Parks Testimony; Galarraga Testimony) Claimant never told employer that he would quit his job if his illness was not accommodated. (Claimant Testimony; Parks Testimony; Galarraga Testimony)

The unemployment insurance decision dated August 23, 2018 found that claimant voluntarily quit work on July 23, 2018, because of a non-work-related illness or injury, not caused by the employer.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

Pursuant to Iowa Code § 96.5(1), an individual shall be disqualified for benefits, if the department finds that the individual left work voluntarily without good cause attributable to the individual's employer.

Iowa Code § 96.5(1)(d) states:

An individual shall not be disqualified if the department finds that:

The individual left employment because of illness, injury, or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury, or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work as not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin Code r. 871-24.25(3), (37) and (38) state:

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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(3) The claimant left to seek other employment but did not secure employment.

(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.

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

Iowa Admin Code r. 871-24.26(6)(b) and (12) state:

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:

(6) Separation because of illness, injury, or pregnancy.

(b) Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

(12) When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. *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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer. Iowa Code § 96.6(2).

Claimant intended to terminate his employment as evidenced by his written Notice of Resignation. The resignation is both evidence of claimant's intent to quit his employment and an overt act of carrying out his intention.

In his Notice of Resignation, claimant does not cite his illness as a reason for quitting his job. Claimant does not mention that his illness is aggravated by his job duties as a sales representative, nor does he allege that the employer has failed to accommodate his illness. However, supposing claimant's illness was the primary reason for his resignation, claimant has not established good cause attributable to the employer. Claimant informed his employer of his illness and provided documentation from his physician in support of his request for medical

leave; however, claimant never informed his employer of his intention to quit if his illness was not accommodated. Claimant has not fully recovered and still has restrictions on telephone usage. Claimant is not able – and has not offered – to return to and perform all the functions of his former job.

The only reason claimant provides for quitting his job in his Notice of Resignation is his desire to pursue a career in information technology. Quitting a job to seek other employment is not good cause attributable to the employer.

On July 20, 2018, claimant gave employer notice of his resignation effective July 23, 2018; and employer discharged claimant immediately. Therefore, claimant is not disqualified from July 20, 2018 until July 22, 2018; but benefits are denied effective July 23, 2018 – claimant's proposed date of resignation.

**DECISION:**

The August 23, 2018, (reference 01) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount.

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Adrienne C. Williamson  
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Decision Dated and Mailed

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