

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**MATTHEW J STONEMAN**  
Claimant

**APPEAL 22A-UI-16975-DS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BERTCH CABINET LLC**  
Employer

**OC: 08/14/22  
Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

On September 9, 2022, the claimant filed an appeal from the unemployment insurance decision dated September 1, 2022, (Reference 01) that denied unemployment insurance benefits, finding that the claimant voluntarily quit the employment on May 13, 2022, for personal reasons. Notice of hearing was mailed to the parties' last known addresses of record for a telephone hearing to be held at 1:00 p.m. on October 6, 2022. The claimant participated personally and was represented by Attorney Joe Lyons. The employer participated through Ashley Stanley, Human Resources Manager, and was represented by Attorney Nancy Anton. Claimant's Exhibits 1-3 were admitted to the record. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Did the claimant voluntarily quit the employment without good cause attributable to the employer?  
Is the claimant able to work and available for work?

**FINDINGS OF FACT:**

The administrative law judge finds that:

The claimant worked for Bertch Cabinet LLC from November 7, 2016, until May 13, 2022, when he voluntarily quit the employment. The claimant was a Production Associate II and reported to Nathan Terhune. His last day of work was April 12, 2022.

In or about early 2021, the claimant began to seek medical care for psychological issues and pain in his hands. It has been the claimant's contention that both issues were caused by the employer. The employer has not accepted responsibility for either issue. The employer provided the claimant with leave of various types, including honoring extensive coverage under the Family and Medical Leave Act (FMLA). The claimant fully exhausted his FMLA coverage on or about May 13, 2022. In total, the claimant used 480 hours of FMLA coverage prior to the separation.

The claimant believed that his medical conditions would be resolved if he could transfer from the "Bath Department" (B-50) at Bertch Cabinet to the department known as "B-60." The claimant

wrote a letter to the employer demanding that he be transferred to B-60. The employer declined to do so. The claimant provided the employer with a note from a physician dated April 26, 2022, which stated that the claimant was released for work as of May 9, 2022. The claimant refused to return to work on May 11, 2022, and did not return to work at all thereafter. The employer made repeated attempts to discuss a date for the claimant to return to work, and the claimant refused to engage in the discussion.

On May 13, 2022, the employer provided the claimant with a letter acknowledging the end of the employment relationship and the claimant's refusal to return to work. The claimant only then provided the employer with a new note from a physician stating that he was under the care of a physician and would need to be "off of work from May 9<sup>th</sup> to May 27<sup>th</sup>."

The claimant testified that he refused to return to work specifically because he was not granted the transfer. This is not a good cause attributable to the employer. Continuing work was available had the claimant not quit the employment and had the claimant been able and available for work.

### **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. Benefits are denied.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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(4) 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:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The 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).

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23 provides in relevant part:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work:

(34) Where the claimant is not able to work due to personal injury.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

The claimant had exhausted all types of leave available at his employer, and he further advised the employer that he was not available or able to work. The claimant was released for work by his physician but continued to refuse to return to work. His refusal was specifically because he was not granted the transfer that he wanted. This is not a good cause for quitting attributable to the employer. Although he was released for work, the claimant continued to refuse to return to work and advised his employer that he was not available for work. The claimant is not eligible for unemployment insurance benefits.

**DECISION:**

The September 1, 2022, (Reference 01) unemployment insurance decision is AFFIRMED. The claimant voluntarily quit the employment without good cause attributable to the employer and is not able to work or available for work. 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.



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David J. Steen  
Administrative Law Judge  
Iowa Department of Inspections & Appeals  
Administrative Hearings Division - UI Appeals Bureau

October 14, 2022  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *There may be a filing fee to file the petition in District Court.*

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.