

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TIMOTHY A THACKER
Claimant

AGAN TRI-STATE DRYWALL SUPPLY INC
Employer

APPEAL 15A-UI-05783-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/19/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 7, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on June 23, 2015. The claimant participated with one witness, Ronald Thacker, father of the claimant. The employer participated through Daniel Pick. Jeremy Alison observed but did not testify.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a boom operator and was separated from employment on April 22, 2015, when he voluntarily quit without notice. Continuing work was available.

The claimant testified the primary reason for resigning on the job was that he was physically unable to continue performing work. Due to a condition the claimant has had since childhood, he has difficulty walking at times without pain. The claimant was not advised by his doctor to resign from the work, but determined it was in his best interest to quit.

The claimant was employed under a previous stint of employment for the employer and was aware of the job responsibilities of a boom operator, including transporting sheet rock. It was the claimant's understanding when hired that he would have two other employees with him to help unload the sheet rock. Nothing was provided in writing by the employer, and in light of the claimant's father urging. Early into the employment, the claimant would from time to time, have to unload sheet rock, if two people did not join him on assignments. The claimant tried to be a good employee by not complaining when he had to unload the sheet rock. Consequently, the employer was unaware of his concerns about unloading the sheet rock until an unrelated warning was issued to the claimant about a week and a half before his separation.

The claimant also felt the employer had not upheld its terms of employment when he did not get a raise or medical insurance as he expected. He did not make the employer aware of his concerns until the same meeting about the warning unloading sheet rock.

In addition, the claimant had shared with his management and peers that he was at one point on a diet and had been directed to go to the gym to help improve his health. The employer testified the claimant shared details about his progress, and from time to time, the employer would ask how things were going. The claimant's feelings had been hurt by comments made by the employer, and on one occasion, the claimant was told by Mr. Pick he did not need lunch.

When the claimant was being counseled for his attendance about a week and half prior to his separation, he brought forth the issues about unloading the sheet rock and the raise. The employer was unaware the claimant was contemplating separation, and told him that if he could get his attendance up, he would be given a raise. When the claimant had to operate a flat-bed truck and the employer was short on help to unload, he elected to resign immediately that day without notice.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 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(21) and (27) provide:

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 § 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 § 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:

(21) The claimant left because of dissatisfaction with the work environment.

(27) The claimant left rather than perform the assigned work as instructed.

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. Industrial Relations Commission, 277 So.2d 827 (Fla. App. 1973).

At the hearing, the claimant said he quit due his personal health condition, and not at the advice of a physician. Cognizant of the claimant's right to make choices he feels are best, his quitting due to a personal physical illness is not good cause under Iowa law. The claimant also testified he quit because of the change in the terms of hire with respect to his pay rate, insurance, and help unloading sheet rock. A claimant with work issues or grievances must make some effort to provide notice to the employer to give the employer an opportunity to work out whatever issues led to the dissatisfaction. Failure to do so precludes the employer from an opportunity to make adjustments which would alleviate the need to quit. Denvy v. Board of Review, 567 Pacific 2d 626 (Utah 1977). The claimant provided multiple reasons with work conditions that led to his separation, that had been "continuous" for over a year. When the claimant continued to work for over a year under the conditions, without specific complaint to the employer, there was no way for the employer to address them. Given the stale dates of the other complaints including comments made about the claimant's diet, they are not individually addressed as the claimant acquiesced to them by not raising concerns with his supervisor or quitting earlier when they arose. Based on the evidence presented, the administrative law judge concludes the claimant's leaving the employment may have been based upon good personal reasons, but it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The May 7, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css