

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JIMMY MCGEE
Claimant

DIVERSIFIED SERVICES FOR INDUSTRY
Employer

APPEAL 20A-UI-07482-HP-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/05/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant Jimmy McGee filed an appeal from a June 29, 2020 (reference 01) unemployment insurance decision that denied benefits for voluntarily quitting his work with Diversified Services for Industry (“Diversified”) on April 5, 2020. The parties were properly notified of the hearing. A telephone hearing was held on August 7, 2020. McGee appeared and testified. No one appeared on behalf of Diversified. Exhibit A was admitted into the record. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

McGee commenced full-time employment as an industrial laborer for Diversified on or about November 12, 2019. Diversified employees work in the John Deere plant and provide maintenance services on equipment coming from China. McGee’s direct supervisor was Tim.

On March 11, 2020, McGee was absent for a funeral. After the funeral, McGee returned to work. McGee had heard the wife of one of the John Deere employees had tested positive for Covid-19. McGee was scared about contracting the virus and infecting his family. McGee continued to work until March 16, 2020.

On March 16, 2020, McGee was working on an engine from China. He was removing oil from an engine. Diversified had not provided masks and had run out of gloves. The Diversified employees had been using the equipment for the John Deere employees and they were told not to use the equipment for the John Deere employees. McGee asked for gloves, but none were available, so he had to work without gloves. That day McGee told his supervisor, Tim, he did not feel safe at work. He also contacted Julie, the human resources representative, and told her he would not be reporting to work because he did not feel safe.

McGee spoke with a coworker who informed him Tim's boss, Dan, had said that employees were being terminated if they did not report to work. McGee's coworker gave him Dan's telephone number. McGee spoke to Dan at 1:28 p.m. on March 19, 2020. McGee told Dan he did not feel safe at work. Dan Told McGee his supervisor, Mark, told him that if he did not report to the second shift that evening he would be terminated.

McGee continued to send a daily text message to his supervisor, Tim, stating he would not be at work. Tim did not respond. On March 30, 2020, McGee spoke with Tim, and Tim told him he was self-quarantining and that he had not heard from Diversified. McGee then called Julie and left her a message asking her about his employment. Julie did not return his call. McGee never received any written notification he had been terminated or that Diversified considered that he had quit.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides an individual "shall be disqualified for benefits, regardless of the source of the individual's wage credits:If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." The Iowa Supreme Court has held a "'voluntary quit' 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 quit requires "an intention to terminate the employment relationship accompanied by an overt act carrying out the intent." *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). "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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016).

871 Iowa Administrative Code 24.25(20) and (21) 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 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:

24.25(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

24.25(21) The claimant left because of dissatisfaction with the work environment.

871 Iowa Administrative Code 24.26(4) 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:

24.26(4) The claimant left due to intolerable or detrimental working conditions.

McGee complained to Diversified he did not have a mask or gloves to perform his job safely. Diversified did not provide the equipment. McGee and the other Diversified employees had been using equipment for the John Deere employees. They were told not to use the equipment. Diversified did not provide McGee with the equipment he requested. McGee told his supervisor, Tim, and Julie, from human resources, he would not be coming to work due to his concerns about contracting the virus. McGee continued to text Tim to report he was not coming to work. Diversified never offered to provide the equipment. Diversified never told McGee he had been terminated or that Diversified considered he had quit his employment. No one appeared on behalf of Diversified to contradict McGee's testimony. After considering the evidence in this case, I find McGee's working conditions were intolerable and detrimental where a reasonable person would be compelled to quit. Benefits are allowed.

DECISION:

The June 29, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed in favor of the claimant/appellant. Benefits are allowed, provided the claimant is otherwise eligible.



Heather L. Palmer
Administrative Law Judge
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August 14, 2020
Decision Dated and Mailed

hlp/sam