

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JONATHAN D WALVOORD**

Claimant

**APPEAL NO. 16A-UI-11244-TN**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERISTAR CASINO COUNCIL BLUFFS**

Employer

**OC: 09/18/16**

**Claimant: Appellant (1)**

Iowa Code § 96.6(2) -- Timeliness of Appeal

Iowa Code § 96.5(1) -- Voluntary Quit

**STATEMENT OF THE CASE:**

Jonathan Walvoord, claimant, filed an appeal from a representative's decision dated October 4, 2016, (reference 01), was denied unemployment insurance benefits. A hearing was scheduled for November 4, 2016 in Council Bluffs, Iowa at which time the claimant participated. Prior to the hearing being held, the employer requested a postponement because they did not have sufficient time to gather witnesses for the in-person hearing that Mr. Walvoord had requested. The administrative law judge became aware of the request after the November 4, 2016 hearing. Based on the employer's request to reopen the hearing record, the hearing was rescheduled to be heard anew on Wednesday, December 7, 2016 in Council Bluffs, Iowa. Mr. Walvoord participated personally. The employer participated by Ms. Alyce Smolsky, hearing representative, and witnesses, Tammy Denman and Ed Powers. Employer Exhibits 1 through 6 were admitted into the record.

**ISSUE:**

Whether claimant left employment with good cause attributable to the employer.

Whether claimant's appeal should be considered timely.

**FINDINGS OF FACT:**

Mr. Walvoord received the adjudicator's decision that was dated October 4, 2016 and disagreed with it. The claimant went to the local area claims center and filed an appeal online. A Workforce representative confirmed to Mr. Walvoord that the appeal had been transmitted. Subsequently, Mr. Walvoord became aware that the appeal had not been received by the appeal's bureau and immediately refiled his appeal. The claimant's appeal is considered to be filed timely under the circumstances.

Mr. Walvoord was most recently employed by Ameristar Casino Council Bluffs, from December 16, 2014 until September 15, 2016, when Mr. Walvoord left work early without prior approval from company management. Mr. Walvoord had been acting in an unusual way that day. Mr. Powers, his supervisor, requested the claimant to accompany him to the secure area for a "wellness check." Mr. Walvoord chose to leave out a side exit rather than accompany his

supervisor as directed. Mr. Powers, the claimant's supervisor, and Ms. Denman, human resource representative, had met with Mr. Walvoord earlier that day regarding concerns that Mr. Walvoord had voiced about the conduct of Mr. Powers and other employees the claimant worked with. Because of the way the claimant had been acting recently and the statements he had been making at work, the employer had been concerned about his psychological welfare and had members of the security department check on Mr. Walvoord at his home on more than one occasion. The company was in the process of investigating some of the allegations that Mr. Walvoord had made at the time the claimant chose to leave employment. Although the claimant did not return to work after leaving his shift on September 15, 2016, the employer did not remove him from the company's employment rolls for an extended period of time. The company sent a certified letter to Mr. Walvoord on September 21, 2016 clarifying that the claimant's previous request for time off under the Family Medical Leave Act would be approved. The employer also attempted repeatedly to contact the claimant by telephone and email, but received no responses.

The employer had noted that Mr. Walvoord had recently been acting in an unusual manner and had been prone to be upset for little or no reason. The claimant left work early on September 11, 2016 because he was very upset when his favorite football team lost a game on television. Based on the statements the claimant made and his actions on September 14 and 15, the employer believed the claimant was becoming suicidal. Based upon the claimant's most recent statements to the company, the employer had decided to allow the claimant time away from work and was willing to work with Mr. Walvoord in resolving any perceived issues with other workers. When the claimant had not returned to work after the employer's repeated efforts, the employer reasonably concluded the claimant had chosen to leave his employment.

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

For the following reasons, the administrative law judge concludes the claimant left the employment 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(6) 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:

(6) The claimant left as a result of an inability to work with other employees.

Iowa Admin. Code r. 871-24.25(21) 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:

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

Iowa Admin. Code r. 871-24.26(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:

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

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

When a person voluntarily quits the employment due to dissatisfaction with the work environment or inability to work with other employees, the claimant is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24/25(21)(6).

Quits due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Services*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993).

Based on the evidence in the record, the administrative law judge concludes that the claimant has not met his burden of proof in establishing that he left employment with good cause attributable to the employer. Although Mr. Walvoord had numerous complaints and concerns, the employer was willing to listen to the claimant's issues and take actions in an effort to keep Mr. Walvoord as an employee. The employer had also gone to the extent of going to the claimant's residence to check on the claimant's wellness and had been willing to allow the claimant to be absent from work for an extended period in hopes that he would decide to remain employed. The employer had also offered assistance to the claimant in the form of a medical leave of absence from work and/or the assistance of the employer's employee assistance program. Mr. Walvoord nonetheless chose to leave the employment based upon his perception that management and other employees were treating him unfairly and improperly. While this may have been the claimant's belief, the evidence in the record does not support the claimant's conclusion. Based on the evidence in the record, the administrative law judge concludes that the claimant voluntarily left employment without good cause attributable to the employer.

Accordingly, the claimant is disqualified from receipt of unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's decision dated October 4, 2016, (reference 01), is affirmed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided claimant is otherwise eligible.

---

Terry Nice  
Administrative Law Judge

---

Decision Dated and Mailed

rvs/rvs