

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AARON J. KOHL
Claimant

**DIA CASE NO. 21IWDUI2122
IWD APPEAL NO. 21A-UI-09377**

AMERICAN FENCE CO. OF CEDAR RAPIDS
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/24/21
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.25 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Aaron Kohl, filed an appeal from the March 25, 2021, (reference 03) unemployment insurance decision that concluded he was not eligible for unemployment insurance benefits. A telephone hearing was scheduled for June 22, 2021. The claimant, Aaron Kohl, participated and presented testimony. Kari Hockemeier represented the employer, American Fence Co. of Cedar Rapids. The administrative file was made a part of the record.

ISSUES:

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

FINDINGS OF FACT:

The claimant began working for the employer, American Fence Co. of Cedar Rapids, on September 14, 2020, and his last day was January 26, 2021. According to Human Resources director Kari Hockemeier, the claimant was absent on December 16, 18, and 28, 2020, as well as January 20, and 21, 2021, without calling the employer prior to his absence. He was discharged due to violating the attendance policy. She explained that the each employee signed a handbook when he or she started employment, and the handbook specified that an employee had to call in 30 minutes prior to the shift, each day he or she was absent. The claimant failed to call in on the above listed dates, which was a violation of notification protocol and grounds for dismissal. (Hockemeier testimony).

The claimant denied missing days of work in December. Regarding the January dates, he explained that he had a kidney stone that took four days to pass. He called his supervisor multiple times to inform him of the situation and explained that he would be gone for multiple days. After the kidney stone passed, the claimant had severe kidney pain. The claimant stated that he was hospitalized during this process and his doctor instructed him to see a specialist. The claimant returned to work on January 26, 2021, and provided a doctor's note excusing him for the week that he was in extreme pain. At the end of the January 26, 2021 shift, the claimant's supervisor called him into the office and let him go. The claimant was not given a warning that termination was a possibility. (Kohl testimony).

REASONING AND CONCLUSIONS OF LAW:

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 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.

Iowa Admin. Code r. 871-24.26 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: (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.

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 (Ia. Dist. Ct. App. 1973). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to

rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

In this case, the undersigned finds the claimant did not voluntarily quit his employment. There is no dispute the claimant was absent multiple days in January and failed to call in to work each of those days. However, he provided credible testimony that he was in direct contact with his supervisor, informed him that he had a kidney stone, and would be absent multiple days. When he returned to work, the claimant provided a note from his doctor, verifying his medical condition.

It may have been understandable that the employer chose to terminate the working relationship after the claimant did not follow the specific handbook guidelines. However, the employer did not provide a handbook or other documentation regarding the absence or call in policy. In this case, the claimant's actions did not show an intent to quit his job. The employer did not show that the claimant no longer desired to remain in the relationship of an employee with the employer. The claimant did not voluntarily quit his job, and the decision is reversed.

DECISION:

The March 25, 2021, (reference 03) unemployment insurance decision is reversed. Claimant did not voluntarily quit his employment. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Kathleen M. O'Neill
Administrative Law Judge

June 30, 2021
Decision Dated and Mailed

CC: Aaron J. Kohl, Claimant (by First Class Mail)
American Fence Co. of Cedar Rapids, Employer (by First Class Mail)
Nicole Merrill, IWD (By Email)
Joni Benson, IWD (By Email)