

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALLAN L FARRIS
Claimant

APPEAL 19A-UI-08274-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JORDISON CONSTRUCTION INC
Employer

**OC: 12/16/18
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On October 23, 2019, Allan Farris (claimant) filed an appeal from the October 15, 2019 (reference 02) unemployment insurance decision that determined claimant was not eligible to receive unemployment insurance benefits because claimant voluntarily quit without good cause attributable to the employer.

A telephone hearing was held on November 12, 2019 at 1 p.m. The parties were properly notified of the hearing. The claimant participated personally. Employer (Jordison Construction Inc.) participated through Transportation Director Jean Paul Provencher.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed by employer as a full-time side-dump semi driver. His first day worked was April 22, 2019. His last day worked was July 2, 2019, when he voluntarily quit. He typically worked from 5 a.m. to 5 p.m., although on several occasions he was asked to work until 7 or 8 p.m. On those occasions, little notice was provided that he would be required to work late. However, claimant was aware at the time of hiring that he may occasionally have to work beyond the scheduled end of his shift. His direct supervisor was Provencher.

On July 2, Provencher asked claimant near the end of his shift to work past 5 p.m. Claimant told Provencher he would not work past 5 p.m., as he had personal matters to attend to. Specifically, claimant needed to make preparations for the 4th of July holiday. Provencher told claimant that if he refused to work past 5 p.m. that he would be terminated. Claimant responded that he was quitting, as he did not want to work late; wanted the next day off; and also wanted a job with better pay. Provencher had previously told claimant he could not have July 3 off, as claimant had requested.

Prior to July 2nd, claimant had been exploring working for Elder Corporation. At the time of claimant's quitting he had not yet been offered a position with Elder Corporation, although he anticipated he would be offered one. Claimant had previously worked for Elder Corporation. Claimant did eventually take a position with Elder Corporation, although not until mid-September 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the October 15, 2019 (reference 02) unemployment insurance decision is affirmed.

Iowa Code section 96.5(1)a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

Iowa Admin. Code r. 871-24.25(27) 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:

...

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

Claimant chose to voluntarily quit on July 2, 2019 rather than stay past his 5 p.m. shift end time. While this administrative law judge sympathizes with claimant's frustration with being required to work late with little prior notice and to not receive time off the following day as requested, that does not constitute good cause for quitting attributable to the employer. Furthermore, claimant has experience in the construction industry, and knew that he may occasionally be required to stay late to finish a job. Because claimant voluntarily quit without good cause attributable to employer, he is disqualified for benefits.

As set forth above, Iowa law provides an exception for disqualification based on voluntary quitting without good cause if the claimant quit for the sole purpose of accepting an offer of other or better employment. However, this administrative law judge cannot find claimant's sole purpose in quitting was accepting an offer of other or better employment. While claimant had been planning to leave employer prior to the July 2 incident and expected he would be offered a position, he did not have an offer of employment in hand at the time he left. He also did not actually start working for his new employer for approximately two months from his quitting. Furthermore, it is clear that claimant's quitting was at least in part because of his dissatisfaction with having to stay late on July 2 and work on July 3.

DECISION:

The October 15, 2019 (reference 02) unemployment insurance decision is affirmed. The claimant voluntarily quit without good cause attributable to employer. Furthermore, claimant did not leave for the sole purpose of accepting an offer of other or better employment. Claimant is disqualified from benefits until he has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided he is otherwise eligible.

Andrew B. Duffelmeyer
Administrative Law Judge

Decision Dated and Mailed

abd/scn