

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEJANDRO MANDUJANO
Claimant

IMMANUEL
Employer

APPEAL 21A-UI-22298-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/20/19
Claimant: Respondent (5)**

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

STATEMENT OF THE CASE:

On October 5, 2021, Immanuel (employer/appellant) filed an appeal from the September 28, 2021 (reference 09) unemployment insurance decision that allowed benefits based on a finding that claimant was discharged on April 8, 2020 without a showing of misconduct.

A telephone hearing was held on November 29, 2021. The parties were properly notified of the hearing. Employer participated by Supervisor Breanna Castro. Manager Alyssa Johansen participated as a witness. Employer was represented by Hearing Rep. Dennis Mullens. Alejandro Mandujano (claimant/respondent) participated personally. Official notice was taken of the administrative record.

ISSUE(S):

- I. 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's first day of employment was March 23, 2020. He was hired as a full-time restorative aide. In this position he would assist participants in exercise programs. Claimant's immediate supervisor was Castro. The last day claimant worked on the job was April 8, 2020.

It became clear shortly after claimant was hired that there was limited work available in his restorative aide position because of the pandemic. Claimant therefore offered to help out by passing medications in another facility. However, a few hours after reporting to the facility it was clear he would instead be performing the work of a CNA.

Claimant was not hired as a CNA and did not agree to perform that work. He was not comfortable doing this work in part because of safety concerns related to the pandemic. He immediately notified Castro that he was not willing to perform CNA work. Castro told him that was the only

work that was available and asked him to think about it. Claimant informed Castro again the following day that he was not willing to do that work and resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the September 28, 2021 (reference 09) unemployment insurance decision that allowed benefits based on a finding that claimant was discharged on April 8, 2020 without a showing of misconduct is MODIFIED with no change in effect.

As an initial matter

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

Iowa Code section 96.5(1) 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.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

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). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

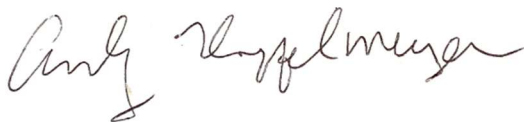
Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The administrative law judge finds claimant resigned due to a substantial change in the contract of hire and misrepresentation at the time of hire as to what type of work he would be performing. Claimant was hired as a full-time restorative aide but was assigned to perform the work of a CNA. When claimant objected to this assignment he was told no other work was available and he resigned as a result. Claimant has carried his burden of proving the resignation was for a good cause reason attributable to employer. Benefits are therefore allowed, provided claimant is not otherwise disqualified or ineligible.

The decision is modified solely to reflect that claimant resigned rather than being discharged. Because benefits are allowed the other issues noticed need not be addressed.

DECISION:

The September 28, 2021 (reference 09) unemployment insurance decision that allowed benefits based on a finding that claimant was discharged on April 8, 2020 without a showing of misconduct is MODIFIED with no change in effect. Claimant's resigned for good cause reasons attributable to employer. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account is subject to charge.



Andrew B. Duffelmeyer
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January 4, 2022
Decision Dated and Mailed

abd/kmj