

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

XAVIER R RAYNOR
Claimant

KUM & GO LC
Employer

APPEAL 22A-UI-04136-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/16/22
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 1, 2022 (reference 01) unemployment insurance decision that denied benefits based upon his voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on March 17, 2022. Xavier Raynor, participated personally. The employer, Kum & Go LC, did not participate. Claimant's exhibits 1-5 were admitted into the record.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a sales associate and food associate. He began working for this employer on *April 27, 2021 and his employment ended on January 19, 2022 when he quit. Claimant's immediate supervisor was Crystal Dunham.

At the end of September or beginning of October claimant testified that he was assaulted by another employee. On the day of the incident, Claimant was at the store as a customer and having a conversation with his assistant manager. Claimant said Ms. Dunham asked him to stay and help unload a truck. As claimant finished the truck, he was having a conversation by a sandwich cooler when another employee approached him and kicked him in his shin and walked away. Claimant reported the incident to Ms. Dunham a few days after the incident. Claimant testified that the supervisor addressed the incident with him on October 22, 2021 after claimant had reported the incident to human resources. Claimant testified that he was forced to work with the employee that assaulted him because Ms. Dunham did not address the issue in a timely manner.

Claimant also testified that he quit because he called in sick to work on October 12, 2021, Ms. Dunham threatened to terminate his employment as a no call, no show. Additionally, claimant testified that on December 24, claimant had transferred to another department. Rather than find someone on the flex crew, claimant was instructed to close kitchen and work store side. Claimant testified that Ms. Dunham threatened termination if he didn't comply with her instruction. Claimant felt it was not his job at that time to cover store side as he had transferred to a different department.

Claimant was instructed to sit down and meet with Ms. Dunham with human resources present. Claimant felt that this was risking further retaliation from Ms. Dunham and did not meet. Claimant felt that he hadn't gotten pay raises that he should have gotten. There are eight pay changes that occurred over claimant's employment with Kum & Go LC. Claimant testified that his pay was not increased appropriately and he should have had more pay increase.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Claimant determined she could no longer work under the conditions created by Ms. Dunham at the store. Claimant had an intention to quit and carried out that intention by tendering his resignation and leaving. As such, 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 (Fla. Dist. Ct. App. 1973).

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.

As such, if claimant establishes that he left due to intolerable or detrimental working conditions, benefits would be allowed. Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal*

Bd., 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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 concluded that, because the intent-to-quit requirement was added to 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. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). “Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)(“[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith”); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer “free from fault”); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)(“The good cause attributable to the employer need not be based upon a fault or wrong of such employer.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, claimant was not required to give the employer any notice with regard to the intolerable or detrimental working conditions prior to her quitting. However, claimant must prove that her working conditions were intolerable or detrimental.

While it is clear that claimant was unhappy with Ms. Dunham as his supervisor, the example claimant testified about indicated that that Ms. Dunham communicated with him regularly and appropriately via text message. See claimant’s Exhibit 1. There was no evidence presented that Ms. Dunham deliberately avoided communicating with the claimant about his altercation with another employee or that Ms. Dunham deliberately failed to provide a pay increase to the claimant. There was no evidence presented that Ms. Dunham inappropriately threatened termination. Given the facts of this case, claimant has failed to prove that under the same circumstances a reasonable person would feel compelled to resign. See *O’Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). Rather, the circumstances in this case seem to align with the conclusion that claimant was unable to work with Ms. Dunham and that claimant was dissatisfied with his work environment in general. These are not good cause reasons attributable to the employer for claimant to have quit.

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 § 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 § 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:

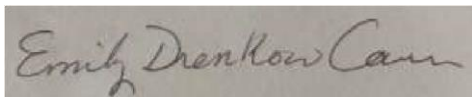
Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 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 § 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.

As such, the claimant's voluntary quitting was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The February 1, 2022 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.



Emily Drenkow Carr
Administrative Law Judge
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March 31, 2022
Decision Dated and Mailed

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