

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CLAY R HILDMAN
Claimant

KERRY INC
Employer

APPEAL 18A-UI-04206-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/11/18
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 28, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant quit without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on April 30, 2018. The claimant, Clay R. Hildman, participated and was represented by James L. Wagner, Attorney at Law. The employer, Kerry, Inc., participated through Annie Marple, Plant HR Manager. Claimant's Exhibit A was received and admitted into the record without objection.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a production operator, from April 20, 2017, until March 12, 2018, when he quit. Claimant had two altercations with coworkers prior to quitting his job. On March 1, one of claimant's coworkers sprayed water in his face and flashed a gang sign at claimant. On March 6, claimant was attempting to work and his coworker came up and said, "Huh? What?" Then, another employee told claimant that this coworker wanted to fight. Claimant did not report either of these incidents to Human Resources. On March 12, claimant went to Marple and told her that he was quitting his job. Continued work was available, had claimant not quit his job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from employment was without good cause attributable to the employer. Benefits are withheld.

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. 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.

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). In this case, claimant's coworkers' conduct on its face is not threatening, intolerable, or so harassing or annoying to warrant immediately quitting. It appears it was claimant's own preconceived stereotypes about his coworkers, based on the coworkers' race, that led claimant to find their conduct unacceptable. 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). In this case, claimant reported that he was quitting and he left his employment. Claimant has not established good cause for quitting his job. Benefits are withheld.

DECISION:

The March 28, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/rvs