

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EDWARD HESTER
Claimant

RICHMOND COUNTY CONSTRUCTION
Employer

**APPEAL 21A-UI-05130-JC-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/30/20
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Edward Hester, filed an appeal from the February 10, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 19, 2021. The claimant participated. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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: The claimant was employed full-time as an electrician and was separated from employment on December 15, 2020, when he quit the job. Continuing work was available.

Claimant worked on site in Augusta, Georgia. His crew consisted of four people and he worked indoors. Claimant’s crew often worked in close contact with other crews as well (such as pipefitters or painters). Claimant said it was not uncommon to work in a small indoor space with ten to twelve people in close proximity.

Claimant is considered high risk if exposed to COVID-19, based upon his underlying health conditions. Claimant several times had to self-quarantine after co-workers tested positive for COVID-19. Employer stated a mask mandate but did not enforce it amongst the employees. Claimant expressed concern about others not wearing masks who worked in close proximity to him, including those on his crew. He was told repeatedly by co-workers, that COVID-19 was a hoax, “fuck a mask”, and “you can work or you can quit”. Prior to quitting, claimant had discussed his concerns with his foreman, general foreman and union steward. When no

changes were made to mitigate exposure to COVID-19, claimant decided “I want to live” and quit the employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant’s separation from the employment was with good cause attributable to the employer.

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.

The claimant has the burden of proof to establish he quit with good cause attributable to the employer, according to Iowa law. “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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Ordinarily, “good cause” is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O’Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep’t of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). “The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith.” *Wiese v. Iowa Dep’t of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) “[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee’s quit in order to attribute the cause for the termination.” *Id.*

While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be “attributable to the employer,” a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address her concerns. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting “attributable to the employer.”

Claimant in this case worked indoors, in close proximity with other co-workers, during the COVID-19 pandemic. Claimant expressed concern to his foreman, general foreman and union steward that employees around him would not wear their face mask. Claimant’s concerns were based upon work conditions, the fact he himself was high risk if exposed to COVID-19 and because on numerous occasions, co-workers had tested positive for COVID-19. Claimant’s repeated complaints were brushed off as he was told the virus was a “hoax” and that his co-workers refused to wear their masks, regardless of employer’s policy. Under these conditions, claimant has established that a reasonable person would find these to be unsafe working

conditions and a reasonable person would quit. Claimant has established good cause for quitting the employment. Benefits are allowed, provided he is otherwise eligible.

DECISION:

The unemployment insurance decision dated February 10, 2021, (reference 01) is REVERSED. Claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.



Jennifer L. Beckman
Administrative Law Judge
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Iowa Workforce Development
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Fax 515-478-3528

April 23, 2021
Decision Dated and Mailed

jlb/ol

NOTE TO CLAIMANT:

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>