

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHAD M EVANS
Claimant

APPEAL 21A-UI-17211-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TURNER CONSTRUCTION COMPANY
Employer

**OC: 05/23/21
Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

On August 5, 2021, Chad Evans (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated August 3, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding he voluntarily quit work on May 4, 2021 for personal reasons.

A telephone hearing was set for September 28, 2021. The parties were properly notified of the hearing. The claimant participated personally. Turner Construction Company (employer/respondent) participated by HR Manager Kendra Fries. Construction Executive Joshua Jones participated as a witness for employer. Claimant's Exhibits 1 and 2 were admitted.

Due to technical issues with the hearing control system, no testimony was taken at that time and the hearing was postponed. The parties subsequently agreed to continue the hearing to September 30, 2021 at 9:00 a.m. The same participants participated at that time. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation from employment 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 February 23, 2015. Claimant's immediate supervisor was General Superintendent Bryan Schmidt. Claimant worked for employer full-time as a superintendent. The last day claimant worked on the job was May 4, 2021. Employer accepted claimant's resignation on that date.

Claimant sent a resignation letter to Jones via email on the evening of May 2, 2021. Claimant indicated in the letter that he was resigning effective in two weeks. He indicated he was resigning because he was under mental and emotional stress due to an ongoing investigation. He felt

threatened that he would be discharged as part of the investigation. The investigation had to do with racial slurs being used on the worksite. Claimant was not alleged to have used racial slurs but was told that the matter was serious and he was expected to be truthful in the investigation. Claimant was not explicitly threatened with discharge and his job was not in jeopardy so long as he was cooperative with the investigation.

Claimant spoke with Jones about the resignation email on May 4, 2021. Claimant felt better after that discussion and no longer wished to resign. However, he did not formally rescind his resignation. Employer informed claimant that afternoon that his resignation had been accepted.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated August 3, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding he voluntarily quit work on May 4, 2021 for personal reasons is MODIFIED in favor of appellant.

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. 871-24.25 provides in relevant part:

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:

(21) The claimant left because of dissatisfaction with the work environment.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

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).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried his burden of proving the voluntary leaving was for good cause attributable to employer.

Claimant expressed a clear intent to resign in the May 2, 2021 email and did not clearly rescind his resignation prior to it being accepted by employer. His resignation was due to feeling threatened by an investigation. However, he was not the subject of the investigation; he was not explicitly threatened with discharge; and his job was not in jeopardy so long as he was cooperative with the investigation. The administrative law judge finds this is not a good cause for resigning attributable to employer. However, the decision is modified to allow benefits from the date the resignation as accepted to the date it was effective, May 16, 2021.

DECISION:

The decision dated August 3, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding he voluntarily quit work on May 4, 2021 for personal reasons is MODIFIED in favor of appellant. Claimant's separation from employment was disqualifying. Benefits are denied from the effective date of the resignation, May 16, 2021. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

October 18, 2021
Decision Dated and Mailed

abd/ol

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.