

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TONY WARD
Claimant

POOLES TRUCK SERVICE INC
Employer

APPEAL 21A-UI-21953-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/22/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On October 4, 2021, Tony Ward (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated September 29, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding he left work voluntarily on August 23, 2021 without a showing of good cause attributable to employer.

A telephone hearing was held on November 29, 2021. The parties were properly notified of the hearing. The claimant participated personally. Pooles Truck Service Inc (employer/respondent) did not participate. 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 around April 2018. Claimant was hired as a full-time driver. Claimant's immediate supervisor was Cody Sly. The last day claimant worked on the job was August 23, 2021. Claimant left work at that time due to safety concerns.

Claimant began work at 9:30 p.m. on that date and was dispatched to pick up a trailer he was told was empty. However, as he was driving it he found out it was fully loaded. This was concerning because someone could have been loading the truck and been injured. Claimant reported this incident to Sly but received no response. A similar incident happened a couple weeks earlier.

Claimant was also concerned about employer directing him to drive a fuel truck on public roads. Claimant did not have a hazardous materials endorsement and could be fined or lose his CDL for doing so. He was directed to do this several times each week. Claimant also raised these concerns with employer prior to resigning but his concerns were not addressed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated September 29, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding he left work voluntarily on August 23, 2021 without a showing of good cause attributable to employer is REVERSED.

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:

(2) The claimant left due to unsafe working conditions.

(3) The claimant left due to unlawful working conditions.

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).

Claimant resigned due to unsafe and potentially unlawful working conditions. Claimant raised concerns about these conditions prior to resigning and they were not addressed. The

administrative law judge finds this this is a good cause reason for resigning attributable to employer. The separation from employment was therefore not disqualifying.

DECISION:

The decision dated September 29, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding he left work voluntarily on August 23, 2021 without a showing of good cause attributable to employer is REVERSED. 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
Administrative Law Judge
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December 7, 2021
Decision Dated and Mailed

abd/abd