

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JAMES A CUMMINS
Claimant

APPEAL NO. 13A-UI-10490-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAWKEYE SOW CENTERS INC
Employer

OC: 08/11/13
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

James Cummins filed a timely appeal from a representative's decision dated September 6, 2013, reference 01, which denied unemployment insurance benefits findings that he voluntarily quit work on June 11, 2013 by failing to report for work for three days in a row and not notifying the employer of the reason. After due notice was provided, a telephone hearing was held on October 8, 2013. The claimant participated. The employer participated by Ms. Tricia Adams, Human Resource Manager.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: James Cummins, III was employed by Hawkeye Sow Centers, Inc. from May 9, 2013 until June 11, 2013 when he voluntarily left employment by discontinuing to report for work. Mr. Cummins was employed as a full-time herdsman and was paid by the hour. His immediate supervisor was Mike Krueger, Unit Manager.

Hawkeye Sow Centers, Inc. concluded that Mr. Cummins had voluntarily quit his employment by failing to report for work for three or more consecutive workdays without notifying his employer because company records did not reflect that Mr. Cummins had reported for work or called in on June 7, 8 or 10, 2013. Mr. Cummins had called in sick on June 6 and the employer expected that the claimant would continue to call in or return to work. After the claimant had failed to report for work for three consecutive days without notification in violation of the company rule, he was considered to have voluntarily left his work with the company.

It is Mr. Cummins position that he left his employment with this employer because the employer's breeding manager "Juan" (last name unknown) was discriminating against him and harassing him by calling him names in Spanish, yelling at the claimant while he was performing his job duties. The claimant also believed that the breeding manager was talking about him to other former employees.

Mr. Cummins maintains that he had complained about "Juan's" treatment to his supervisor, Mike Krueger, but Mr. Krueger did nothing but advise the claimant that he must get along with other workers.

Mr. Cummins was given the opportunity to bring any concerns about the treatment that he was receiving from the breeding manager or any other work condition to the attention of the employer via employment reviews that were given to him on May 28, 2013 and June 5, 2013. Mr. Cummins did not report or indicate any dissatisfaction with any aspect of his employment on those reviews. Mr. Krueger did not report that Mr. Cummins had complained about the treatment from another worker. Company employees are informed in orientation and by the company handbook that if they are experiencing difficulty with their immediate supervisor in having a problem resolved, they have the right to go up the chain of command to complain to the company's human resource department or upper management about the issue. Mr. Cummins did not complain to upper management about any work issues. Mr. Cummins agrees that had not informed his immediate supervisor that he was considering quitting over the matter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant voluntarily left employment without good cause attributable to the employer.

Iowa Code section 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.

871 IAC 24.25(21) and (22) provide:

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.
- (22) The claimant left because of a personality conflict with the supervisor.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6(2). An individual who voluntarily leaves their employment must first give notice to the employer of the reason for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Claimants are not required to give notice of intention to quit due to intolerable, detrimental or unsafe working environments if the employer had or should have had reasonable knowledge of the condition. Hy-Vee v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

The evidence does not establish that the work conditions were intolerable but does establish that Mr. Cummins was having difficulty in working with another employee that he could not get along with. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the individual or claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Fla. App. 1973).

In the case at hand the evidence establishes that although Mr. Cummins may have expressed his dissatisfaction to his supervisor about the conduct of another worker, the claimant give not give notice to his employer that he was considering quitting his job because of the issue. Therefore, the employer was not provided an opportunity to address or resolve the complaint. Mr. Cummins also did not bring his dissatisfaction to the attention of the company via two job reviews that were given to him by indicating to the company's human resource department or any other management individual that he was having issues that were not being resolved.

While Mr. Cummins' reasons for leaving were undoubtedly good-cause reasons from his personal viewpoint, for the above-stated reasons the administrative law judge concludes they were not good-cause reasons that were attributable to the employer. The claimant is ineligible to receive unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated September 6, 2013, reference 01, is affirmed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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