

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROBERT W VARLAND
615 'L' ST
FT DODGE IA 50501

WEST CENTRAL COOPERATIVE
PO BOX 68
RALSTON IA 51459

AMENDED

Appeal Number: 04A-UI-12647-HT
OC: 10/31/04 R: 01
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, West Central Cooperative (WCC), filed an appeal from a decision dated November 18, 2004, reference 01. The decision allowed benefits to the claimant, Robert Varland. After due notice was issued a hearing was held by telephone conference call on December 20, 2004. The claimant participated on his own behalf. The employer participated by Human Resources Manager Barb Quandt and Regional Manager Jim Schleisman. Exhibits A and B, were admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Robert Varland was employed by WCC from March 26, 2001 until October 20, 2004. He was a full-time sales and service specialist.

The claimant was experiencing some problems with a co-worker who was supposed to be his assistant. He felt she was impairing his ability to provide good service to customers and increasing his workload because she did not observe the dress code when calling on customers and made too many personal phone calls when she should have been working. He mentioned the phone calls to his supervisor, Regional Manager Jim Schleisman, but never specifically said he thought she was the cause of his increased workload or that he wanted something done to make this other employee observe the proper procedure and improve her performance.

On October 18, 2004, the claimant took matters into his own hands and sent this co-worker an e-mail, apparently chastising her about missing money, telling her not to try and keep up with him because he would "plow [her] under," and telling her if she thought he was a "bastard" after reading the e-mail, that was "fine." He was given a written warning the next day because of this e-mail. The disciplinary action upset him a great deal and on October 20, 2004, he asked to speak with Human Resources Manager Barb Quandt.

At the meeting with Ms. Quandt, the claimant only discussed that he was "overworked" and did not get a lunch hour, and he felt this was a violation of labor law. The human resources manager accessed the necessary information from the department of labor and showed him that as long as he was paid for his time, no violation occurred. He acknowledged that he was paid for this time. In addition, he complained about a Victoria's Secret catalog, which was sitting in the office he shared with the part-time harvest crew and another employee. Ms. Quandt referred that matter to Mr. Schleisman who acted upon it immediately by notifying the employees it was to be removed that day and, in the meantime, putting it out of sight under a pile of papers.

Before he left the meeting Ms. Quandt asked if he wanted her to talk to Mr. Schleisman about the workload but he said he would deal with it in his own way. His manner of dealing with it was to photocopy various parts of the employee handbook, highlighting the violations of which he felt the other employee to be guilty, and left them on the regional manager's desk. Mr. Schleisman was irritated to find this pile of documents on his desk when he returned and he told the claimant he had too much to do to indulge in such childish conduct.

An argument ensued during which the claimant asked if the regional manager wanted him to quit and he was told to do whatever he had to do. The claimant admitted he had already looked for another job by accessing a web site during work that morning, and again asked if the employer wanted him to quit. Mr. Schleisman again told him he had to do what he needed to do and the claimant said, "okay." He was presented with a blank piece of paper, which he refused to write upon, and insisted he be provided with a form. The regional manager printed out a voluntary resignation form which the claimant then signed, after which he gathered up his personal belongings, asked for and was given money to pay for things he had "donated" to the workplace, then left.

Robert Varland has received unemployment benefits since filing a claim with an effective date of October 21, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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(28) 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:

(28) The claimant left after being reprimanded.

The claimant maintains he was "forced" to resign but there is no evidence that the employer intended to discharge him if he did not resign. Therefore, no duress was involved and the claimant's decision to quit was voluntary. See 871 IAC 24.26(21).

The issue is whether he had good cause attributable to the employer for quitting. He quit because he had been reprimanded the day before and was told the regional manager did not have time to deal with "childish" actions when he attempted to justify his actions in a round about way.

It appears Mr. Varland had many complaints regarding his co-worker that he did not address in any meaningful or professional manner. He complained about her personal phone calls but never made it clear he felt her failure to observe the dress code and the personal calls were causing problems with customers and creating more work for him. At no time did he tell Mr. Schleisman he wanted this person dealt with firmly but took it upon himself to write an e-mail to her which was patronizing and contemptuous in nature.

The disciplinary action he was given as a result of the e-mail contributed heavily to his decision to quit because he felt it was unfair. When he made an appointment with the human resources manager, he did not discuss the reprimand and he failed to discuss the most relevant of his concerns, that of the co-worker's actions causing him more work, and his objections to her conduct. Ms. Quandt intervened immediately on the issue of the Victoria's Secret catalog about which he complained and the administrative law judge believes she would have taken the same immediate action on any other complaints he had.

Mr. Varland was able to make an appointment with the human resources manager to discuss his concerns but, for reasons, which were never made clear, seemed unwilling to make a specific appointment with Mr. Schleisman, who was his direct supervisor, to discuss the concerns face to face. While the supervisor's response to the highlighted portions of the employee manual he found on his desk may not have been the most prudent when he expressed his disapproval of the manner in which the claimant chose to "deal with" the complaints on his own, it was not an invalid response. The claimant apparently preferred to be so circuitous in his approach that nothing was ever made clear to any member of management as to what exactly his complaints were. If he felt Mr. Schleisman and Ms. Quandt would somehow be able to figure out what his concerns were without him being straightforward about expressing them, he was incorrect.

Leaving a pile of documents on the supervisor's desk is not the manner in which such problems should be addressed. The highlighting of portions of the handbook did not apprise the employer of his exact concerns, it did not make clear he felt his own workload was increasing because of this other person's conduct, and was an approach which was so vague as to be meaningless. Mr. Varland needed to make it clear precisely what his problems were and what he expected of the employer. He also needed to inform the employer he would quit unless his concerns were dealt with, as required by Swanson v. EAB, 554 N.W.2d 294 (Iowa App. 1996). He failed to take any of these necessary steps.

The administrative law judge notes the claimant also maintained he quit in part because his supervisor had given him a picture of a semi-nude woman approximately one to two weeks before he quit. At the time he did not notify the supervisor he felt it was inappropriate nor did he mention it to the human resources manager when he discussed with her his concerns about the Victoria's Secret catalog. The administrative law judge concludes the claimant had no real objection to the picture but was merely adding that retroactively to the list of his. It has no real significance to the decision to resign. He had failed to bring this complaint to anyone's attention until the appeal hearing, which was well after he had resigned.

The record establishes the claimant did not have good cause attributable to the employer for quitting and he is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of November 18, 2004, reference 01, is reversed. Robert Varland is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

The claimant was previously found to be overpaid due to the receipt of vacation pay and the overpayment was collected via an offset of other weeks of unemployment. As a result his net overpayment is \$322.00.

bgh/pjs/b