

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN GANN
Claimant

APPEAL NO. 11A-UI-03831-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

**OC: 01/23/11
Claimant: Appellant (5)**

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Kevin Gann (claimant) appealed an unemployment insurance decision dated March 18, 2011, reference 04, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Target Corporation (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 19, 2011. The claimant participated in the hearing. The employer participated through Human Resources Business Partners Lindsay Cota and Amanda Schneider. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from his part-time employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a seasonal general laborer from October 26, 2010 through December 6, 2010. The employer's attendance policy provides that an employee is considered a voluntary quit if he is a no-call/no-show for three consecutive workdays. The claimant was a no-call/no-show for three days ending on December 6, 2010 and was considered to have voluntarily quit his employment.

The claimant testified at the hearing that he quit because of harassment from his co-employees but could not provide any detailed information. He did mention his complaints to the employer on November 29, 2010 and the employer conducted an investigation. The employer determined the complaint was unfounded and advised the claimant of its finding on December 3, 2010. The claimant did not return to work after that date.

The claimant is currently going to school full-time and working part-time at Bill's Steakhouse.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

871 IAC 24.23(5) provides:

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

The claimant quit his part-time employment on December 6, 2010 without good cause attributable to the employer. He would be monetarily eligible based on wages from other employers, but he is not currently available to work. The claimant is going to school full-time and working part-time. He does not meet the availability requirements of the law and benefits are therefore denied.

DECISION:

The unemployment insurance decision dated March 18, 2011, reference 04, is modified with no effect. The claimant does not meet the availability requirements of the law and benefits are denied.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw