

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL E MARTIN
Claimant

APPEAL NO: 11A-UI-06202-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALANIZ LLC
Employer

OC: 04/10/11

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Alaniz, L.L.C. (employer) appealed a representative's May 6, 2011 decision (reference 01) that concluded Paul E. Martin (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 7, 2011. The claimant participated in the hearing. Mike Owens appeared on the employer's behalf. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 16, 2010. He worked full time as a stock handler in the employer's direct mail facility. His regular schedule was 6:00 a.m. to 4:15 p.m. Monday through Thursday, but frequently had overtime work on Fridays and Saturdays, as well as occasional Sundays. His last day of work was on February 18 or February 19, 2011.

On that last day the claimant had a dispute with the plant manager regarding some problems the claimant was having with coworkers and the employer's failure to transfer the claimant to another area. The claimant told the plant manager that he wanted to take the next week off to cool off and to look for another job. The plant manager denied the claimant's request, so the claimant responded that he would just call in absences.

The claimant did call in on February 21, February 22, and February 23. He did not call in or report for his shifts on February 24, February 28, or March 1. As of March 1 the employer

considered the claimant to have voluntarily quit by job abandonment under its three-day no-call/no-show policy of which the claimant was aware. Later on March 1 the claimant did call and speak to the plant manager to inquire about the work schedule, and the plant manager indicated that separation papers had been written up on him. Still later on March 1 Mr. Owens, the human resources manager, contacted the claimant to learn what had happened, and the claimant responded that he had been mad and upset about the situation and needed to get away to diffuse the situation.

The claimant felt coworkers were rude to him and would not assist him when he got behind as they felt he was too slow, even though he was expected to assist them if they got behind. He felt the plant manager did not assist in getting the coworkers to assist him, but got mad at the claimant if he failed to assist the coworkers. He was also unhappy that he had not yet gotten his performance evaluation which was necessary for him to get a raise.

The claimant established a claim for unemployment insurance benefits effective April 10, 2011. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

Iowa Code § 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 provides that, 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. However, an intent to quit can be inferred in certain circumstances. For example, a three-day no-call/no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4).

The claimant denied that he was a three-day no-call, no-show; however, he could not establish what days other than February 21, 22, and 23 he might have called in. The employer had some documentation indicating that the claimant had not called in on the three sequential regular workdays of February 24, February 28, and March 1. The claimant asserted that he had been told by the plant manager prior to March 1 that separation paperwork had already been written up for him. However, he did not have clear information as to when that might have occurred if it was prior to March 1. The employer did read from a contemporaneous internal memorandum documenting a conversation between Mr. Owen and the claimant occurring on March 1 in which Mr. Owen reflected that he claimant had reported speaking to the plant manager that same day. Further, as the employer is relying upon the three days of February 24, February 28, and March 1 as being the three days of no-call/no-show, it is not logical that the employer would have written up separation papers for that prior to March 1 itself.

Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant did exhibit the intent to

quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with coworkers or a supervisor is not good cause. 871 IAC 24.25(6), (21), (22). While the claimant's work situation was perhaps not ideal, he has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). Rather, his complaints do not surpass the ordinary tribulations of the workplace. The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's May 6, 2011 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of March 1, 2011, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css