

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

SCOTT A SMITH
5741 N PINE ST
DAVENPORT IA 52806

QUAD CITIES AUTOMATIC POOLS INC
1021 STATE ST
BETTENDORF IA 52722-4855

Appeal Number: 04A-UI-00086-RT
OC: 11/30/03 R: 04
Claimant: Appellant (1)

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 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Scott A. Smith, filed a timely appeal from an unemployment insurance decision dated December 24, 2003, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on January 26, 2004, with the claimant participating. Vicki Hall, Co-Owner and Secretary/Treasurer, participated in the hearing for the employer, Quad Cities Automatic Pools, Inc. Nelson Schrenk, Production Manager, was available to testify for the employer but not called because his testimony was unnecessary and would have been repetitive. Employer's Exhibit 1, 2, and 3 and Claimant's Exhibits A, B, C, and D were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits 1 through 3 and Claimant's Exhibits A through D, the administrative law judge finds: The claimant was employed as a full-time wholesale salesperson from September 30, 2002 until he voluntarily quit on November 24, 2003. At that time, the claimant wrote out a resignation statement at Claimant's Exhibit A on November 24, 2003 and placed it on his desk that day. It was found by the employer the next day. The claimant quit because on November 24, 2003, the employer had received a statement on its credit card assigned to the claimant for the purchase of travel expenses and other employment related expenses and asked the claimant about the expenses thereon. This receipt appears at Employer's Exhibit 3. The receipt contains numerous expenses charged by the claimant for personal expenses contrary to the employer's policy and further contrary to a warning the claimant had received on June 16, 2003 which appears at Employer's Exhibit 1. The claimant conceded to unauthorized charges and conceded further to allow the employer to deduct those charges from his paycheck and future commissions as shown at Employer's Exhibit 2. The claimant never expressed any concerns about his working conditions or his pay or deductions from his pay to anyone at the employer in a position to address his concerns nor did he ever indicate or announce an intention to quit to anyone at the employer if his concerns about his pay were not addressed.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 24.26(1) provides:

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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

871 IAC 24.25 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.

871 IAC 24.25(21), (37) provides:

(21) The claimant left because of dissatisfaction with the work environment.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

The parties concede that the claimant left his employment voluntarily or voluntarily quit. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant testified that he left his employment because the employer breached his contract of hire in as much as the employer deducted charges from his salary and commissions. The claimant's testimony is not credible and the administrative law judge does not believe that this was the motivating factor for the claimant's quit. The claimant testified and produced documents showing that the employer had withheld certain moneys, as shown at Claimant's Exhibit B, C, and D. However, these deductions had been made some time before the claimant's quit. The administrative law judge concludes that the claimant actually quit when his unauthorized expenditures from the employer's credit card were discovered by the employer on November 24, 2003, the very day the claimant quit. This is not just a coincidence. Further, the claimant conceded that he had made unauthorized purchases from the employer's issued credit card even as far back as June 2003 as shown at Employer's Exhibit 1.

Employer's Exhibit 1 was a warning dated June 16, 2003, for unauthorized purchases on the credit card and permits the employer to deduct from any and all current and future commissions the amounts charged inappropriately by the claimant on his employer issued credit card. The employer concedes that it did deduct charges from the employer's checks for these unauthorized charges. Iowa Code Section 91A.5 provides that an employer can withhold employee's wages when the employer has written authorization from the employee to do so and the employee here gave such permission. Further, that section prohibits the withholding of funds unless losses to the employer were attributable to the employee's willful or intentional disregard of the employer's interest. The claimant testified that he knew that he was not suppose to make personal charges on his credit card and nevertheless did so. The administrative law judge must conclude that the claimant's behavior was willful or deliberate and the employer was justified in withholding funds for those expenses. The claimant testified that he made those unauthorized charges because of the employer's improper withholding or deduction of funds from his check. However, this is simply not credible because the claimant was making unauthorized purchases prior to June 16, 2003. Accordingly, the administrative law

judge concludes that the employer did not willfully breach the claimant's contract of hire and the claimant's quit is without good cause attributable to the employer. There is also not a preponderance of the evidence that claimant's working conditions are unsafe, unlawful, intolerable or detrimental.

The evidence establishes that the claimant left his employment basically because he was caught making personal expenses and perhaps he was dissatisfied with his work environment, but this is not good cause attributable to the employer. Finally, the administrative law judge concludes that the claimant never expressed any concerns about the reasons he now states for his quit to anyone at the employer in a position to address his concerns nor did he ever indicate or announce an intention to quit to anyone at the employer.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of December 24, 2003, reference 01, is affirmed. The claimant, Scott A. Smith, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits.

kjf/b