

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLT VAN SLYKE

Claimant

APPEAL NO: 14A-UI-07249-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BERTCH CABINET MFG INC

Employer

OC: 12/22/13

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 10, 2014, reference 02, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 6, 2014. The claimant participated in the hearing with Attorney Benjamin Roth. Mitzi Tann, Human Resources Director and Tim Rickert, Department Leader, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time finishing apprentice on the UV line for Bertch Cabinet from November 27, 2007 to June 20, 2014. He voluntarily quit his job by walking out after being told if he did so it would be considered job abandonment and a voluntarily leaving of employment.

On June 20, 2014, the claimant reported for work at 6:32 a.m. for his 6:30 a.m. shift. At approximately 7:10 a.m. he approached Department Leader Tim Rickert and stated he needed to leave. He said, "I can't handle it anymore." Mr. Rickert asked him what the problem was and the claimant stated the employer never handled his problems with co-worker and on-again off-again girlfriend Laura Payne who worked in the same department as the claimant. Mr. Rickert told him it was not his job to worry about other employees and how the employer addressed those issues and also explained there were privacy concerns to consider. The claimant then started talking about his electric bill and said his power had been shut off. Mr. Rickert replied that he needed the claimant back at work and said he would do whatever he could to help him, stating maybe he could leave a little later. Mr. Rickert continued that if the claimant left at that time it would be considered walking off the job. The employer wanted the claimant to stay because if he left at best it would result in a work slowdown and at worst the employer would have to shut down his line. The claimant returned to work but left the building at 7:18 a.m. Mr. Rickert notified Production Manager Tracy Bertch the claimant left and then

informed Human Resources Director Mitzi Tann. He told both of them the claimant walked off the job.

Ms. Tann spoke to Mr. Bertch to learn what, if anything, he observed of the situation and Mr. Bertch indicated he was standing nearby with a vendor when he saw the claimant speaking to Mr. Rickert and heard the claimant say, "I can't handle it here." The employer considered the claimant to have voluntarily quit by walking off the job.

On June 23, 2014, Ms. Tann received a voice mail message from the claimant that was generic in nature and did not appear to be directed to anyone in particular in which he said he wanted the employer to call him about a situation. Ms. Tann called Mr. Rickert and Mr. Bertch in to her office so they could place a conference call to the claimant and although the claimant's phone rang he did not pick up and there was no voice mail on the phone so the employer was unable to leave a message for the claimant. That was the last contact the employer had with the claimant.

The claimant had complained about Ms. Payne bothering him at work and calling him names when others were not around. The claimant received a warning about a confrontation with Ms. Payne April 23, 2014, and was sent home because he was upset. He approached Shift Leader Christina Barker June 19, 2014, and stated Ms. Payne had been in his area bothering him. Ms. Barker watched to see if there was any interaction between the claimant and Ms. Payne but reported to Mr. Rickert she did not see Ms. Payne do anything that warranted the employer's intervention. The claimant did ask for a transfer to his previous department at one point but that department manager would not allow him to return due to attendance issues.

The claimant testified Mr. Rickert terminated his employment in the middle of a conversation about Ms. Payne when he said, "Colt, I think it's time you find yourself a new job." The claimant stated he was "shocked" and assumed his employment was terminated but did not ask Mr. Rickert why he was being discharged. Mr. Rickert does not have the authority to discharge an employee and the claimant has never seen him terminate another employee's employment by himself. Additionally, the employer did not walk the claimant out as is the employer's practice when an employee is discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his position 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.

While the claimant maintains his employment was terminated, the employer's testimony that he voluntarily quit his job by walking out after being told the employer would consider his leaving a voluntary separation from employment was more persuasive. Mr. Rickert did not have the authority to discharge an employee and the claimant had never seen him do so. Furthermore, the claimant was not walked out of the plant like employees who have been terminated are as a routine matter of policy and procedure. The preponderance of the evidence shows the claimant voluntarily left his employment June 20, 2014.

The remaining issue is whether the claimant's voluntary leaving was for good cause attributable to the employer. 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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). 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.

The claimant was upset by his on-again off-again girlfriend/co-worker's behavior toward him and the employer's failure to respond in a manner the claimant deemed appropriate. Although the claimant complained about her conduct, her behavior never occurred in front of the employer or co-workers and the situation was more of a "he said she said" circumstance. Even if the employer had addressed Ms. Payne's behavior with regard to the claimant, he would not have been aware of it as personnel issues must be kept confidential by the employer.

This situation appears to be one of the unfortunate consequences that can arise when co-workers become involved in a personal relationship. While many employees can maintain a working relationship despite what may happen in their personal relationship but many cannot. When that happens employers are often left with "he-said she-said" issues between the co-workers and are in the untenable position of being asked by the parties to effectively become a referee in their relationship. That is not an employer's responsibility. While the claimant was unhappy with Ms. Payne's name calling and said she was bothering him, whatever she was doing was done subtly enough that it was basically undetectable to the employer even when it was watching for it. Although the claimant was frustrated, the administrative law judge must conclude he has not demonstrated that his leaving was for good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits are denied.

DECISION:

The July 10, 2014, reference 02, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css