

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON M HUISMAN
Claimant

APPEAL NO: 12A-UI-03931-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAPPY PORK INC
Employer

OC: 02/26/12

Claimant: Appellant (5)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Brandon M. Huisman (claimant) appealed a representative's April 5, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Happy Pork, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 1, 2012. The claimant participated in the hearing and was represented by Aaron Murphy, attorney at law. Karl Theis appeared on the employer's behalf and presented testimony from two other witnesses, Dr. Gil Patterson, D.V.M., and Dennis Austin. During the hearing, Claimant's Exhibit A was entered into evidence. 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:

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 or about December 20, 2010. He worked full time as a herdsman and farrowing manager at the employer's swine production facility. His last day of work was February 29, 2012.

The claimant and four other employees had been having a dispute with the employer since about January 24, 2012; the employer had warned them all at that time that they were not performing their jobs adequately. The claimant at least also disagreed with the employer's decisions on how an outbreak of a disease in the herd should be handled.

There had been a manager position available for which the claimant had applied. On February 28 he learned indirectly that he was not being given that position, but rather, someone outside of the current employees, with whom the claimant was familiar, was being hired. That night the claimant called the business owner, Theis, very upset, and expressed his displeasure.

He also again questioned the health protocols which the consulting veterinarian, Patterson, was imposing for dealing with the swine disease. Theis told the claimant he was not going to discuss the protocols with the claimant that night, but indicated they would have a meeting in the morning to discuss the protocols. Later yet that night the claimant called Patterson; he was still upset, and advised Patterson that he would make things difficult for the new manager.

The next morning, February 29, prior to Theis arriving, the claimant gathered the other employees and had a meeting with Patterson to discuss the disease protocols. The claimant and perhaps some of the other employees believed the employer should take a more aggressive stance on vaccinating the animals; Patterson and the employer had determined to wait until the majority of the animals had been exposed, as in the veterinarian's professional opinion, the vaccine was most effective in animals who had at least some preliminary exposure. The claimant voiced his disagreement with this approach, and the discussion became heated. Patterson ultimately told the claimant and other employees, perhaps with some vulgarities, that if they were not willing to follow the procedures as the employer had determined upon professional advice, that they should leave. The claimant and two of the three other employees then got up and left.

The claimant asserted that he had not quit, but that Patterson had discharged him. In the alternative, he suggested that he left because of various safety concerns. Some evidence was presented that there had been some electrical and other issues present in the facility. However, the claimant did not establish that these issues were ongoing issues that were present at the time of February 29 or that the employer had failed to address known issues when they arose.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that his separation was not “voluntary” as he had not desired to end the employment; he argues that it was the employer's action or inaction which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 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. The rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as where an employee has not been told he is discharged but leaves rather than perform work as assigned. 871 IAC 24.25.

The claimant was not told he was discharged, but left rather than perform his duties as directed; therefore, the separation is considered to be a voluntary quit. The claimant then 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 a supervisor is not good cause. 871 IAC 24.25(21),

(22). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). 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). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's April 5, 2012 decision (reference 01) is affirmed as modified with no effect on the parties. The claimant voluntarily left his employment without good cause attributable to the employer. As of February 26, 2012, 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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