

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MATTHEW OBRIEN
Claimant

APPEAL NO. 18A-UI-06203-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHOE SHOW INC
Employer

OC: 08/13/17
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Matthew O'Brien (claimant) appealed a representative's June 1, 2018, decision (reference 11) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Shoe Show (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 22, 2018. The claimant participated personally. The employer participated by Karen Cheek, Human Resources Director, and Lori Thiele, District Supervisor. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 20, 2018, as a full-time store manager.

While he was working on May 14, 2018, the human resources director telephoned the claimant to investigate complaints from store employees. The director questioned the claimant about his manner of alerting surrounding stores regarding a criminal that had been in the claimant's store. The claimant did not see the person who was passing counterfeit bills but described her as a black woman to others. In fact, the woman was Caucasian. The claimant admitted to making the statement and assuming she was black. The employees reported that the claimant used the word "nigger" in the work place. The claimant denied using the word.

The director questioned the claimant discussing his personal Wi-Fi name, INSTRUCKS, at work. The claimant admitted telling employees his personal Wi-Fi name. He said that his neighborhood watch group put "INS Trucks" on t-shirts, hats, and other items because construction workers in the area were leaving trash on the ground and the workers were mostly Hispanic and Latino.

The director asked the claimant the intent communicated by the choice of the name of his personal Wi-Fi? The claimant was silent. The director asked the claimant if it could be construed as prejudicial against Hispanics and Latinos. The claimant said, "No". The director asked the claimant about the presumption of assuming the criminal was black. She asked if his comment could be considered racist by the employees. The claimant said he made a mistake. The director said, "Help me understand. It sounds inflammatory". The claimant asked, "Are you firing me?" The claimant disconnected the call. The director had not completed her investigation.

After the call, the claimant talked to his district supervisor. He was upset and asked if he was fired. The supervisor told him he was not. The claimant went out to his car to talk to his wife and calm himself. He did this four times. The last time he returned to the store, he told the supervisor he was going to turn in his keys. The supervisor retrieved a separation agreement for the claimant to complete. The claimant signed the form and wrote "I am leaving after be (sic) called 'racist'". Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25(28) 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:

(28) The claimant left after being reprimanded.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer he was leaving and quit work. When an employee quits work after having been reprimanded, his leaving is without good cause attributable to the employer. The claimant left work after having been questioned in the course of an investigation. The claimant thought he was being reprimanded for inappropriate behavior. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's June 1, 2018, decision (reference 11) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs