

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL S MOSSMAN
Claimant

APPEAL NO. 06A-UI-11562-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEVERAGE MART
Employer

OC: 10/29/06 R: 01
Claimant: Respondent (4/R)

Section 96.5-1 – Voluntary Quit
871 IAC 24.27 – Voluntary Quit Part Time Employment

STATEMENT OF THE CASE:

Beverage Mart (employer) appealed a representative's November 22, 2006 decision (reference 01) that concluded Michael S. Mossman was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 18, 2006. The claimant participated in the hearing. Dana Lefary, an owner and manager, and Rita Renshaw, a bartender, appeared on the employer's behalf. 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:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working part-time for the employer on June 23, 2006. The claimant worked about 25 hours a week as a bartender and sales associate. Lefary was the claimant's supervisor.

During his employment, the claimant complained about a patron who was verbally abusive to him after the patron had too much to drink. Although the claimant wanted this patron barred from the employer's establishment, Lefary just gave the patron a warning. After Lefary talked to the patron, the claimant did not experience any further problems with this patron.

The claimant, however, had problems with the patron's brother, who was also a regular at the employer's bar. On November 1 or 2, the claimant was working on the packaging side of the employer's business. Business was slow and the claimant's girlfriend was in the bar. After patrons started buying his girlfriend drinks, the claimant sat in the bar for quite a while.

During the claimant's shift on November 1 or 2, the patron's brother, D., had a physical confrontation with the claimant. D. also made comments to the claimant that the claimant considered threatening. The bartender on duty, Renshaw, did not see D. shake the claimant. She saw the claimant grab a broom D. had been given to sweep up popcorn D. had thrown on the floor. When D. looked as though he may start a fight with the claimant, two other patrons forcibly took D. outside.

On Thursday, November 2, the claimant left a note that he was quitting effective immediately because he had been harassed again by a bar patron.

The claimant established a claim for unemployment insurance benefits during the week of October 29, 2006. The claimant has wages in his base period from other employers.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer.

The law presumes a claimant quits with good cause if he leaves employment because of intolerable working conditions. 871 IAC 24.26(4). The claimant quit after a regular patron, who was intoxicated, shook him up and made uncalled for comments to him on November 1 or 2. Although the claimant should not have been in the bar the night this occurred, he was. Patrons bought the claimant's girlfriend drinks so the claimant went to the bar to be with his girlfriend when he was not busy. The claimant knew the patron could be "mean" when he had too many drinks and this night was no exception. Even though the claimant asserted the patron physically assaulted him, the claimant never reported the incident to the police or told Lefary about it. Since Lefary took action when the claimant complained about another patron's verbal assault, the facts indicate the employer would have again addressed D. about the physical confrontation he had with the claimant. This isolated incident does not rise to the level of intolerable working conditions when the claimant knew or should have known an intoxicated person could do or say anything. The facts establish the claimant quit his employment for personal reasons that do not qualify him to receive unemployment insurance benefits. If the claimant had been working full-time, he would not be qualified to receive unemployment insurance benefits.

When a claimant quits a part-time job for reasons that do not qualify him to receive benefits, but has wage credits from other employers that make him monetarily eligible to receive benefits, the claimant is qualified to receive benefits even if he has not earned requalifying wages or ten times his weekly benefit amount. 871 IAC 24.27. Therefore, as of October 29, 2006, the claimant is qualified to receive unemployment insurance benefits

Based on the wage credits from other employers in his base period, the claimant is monetarily eligible to receive benefits as of October 29, 2006. Any wages from the employer that appear in the claimant's base period cannot be used to determine the claimant's monetary eligibility. Therefore, this matter is remanded to the Claims Section to recalculate his monetary determination or his maximum weekly benefit amount.

DECISION:

The representative's November 22, 2006 decision (reference 01) is modified in the employer's favor. The claimant quit his part-time employment for reasons that do would not qualify him to receive benefits if he had been working full-time. Since the claimant quit a part-time job, as of October 29, 2006, he is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer has some wage credits from the employer in his base period. Since these wage credits cannot be included when determining his monetary eligibility, this matter to remanded to the Claims Section to recalculate the claimant's monetary eligibility without the wage credits he earned from the employer.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css