

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSSELL ROGERSON
Claimant

APPEAL NO: 15A-UI-06643-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF RIVERSIDE
Employer

OC: 05/10/15
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 1, 2015, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder July 17 and continued August 26, 2015. The claimant participated in the hearing with Riverside Current Newspaper Owner and Publisher Ranee Fladung. Catherine Gerlach, Associate City Attorney and William Sueppel, City Attorney, 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 City Administrator/Economic Development Director for the City of Riverside from August 14, 2012 to May 7, 2015. He voluntarily left his employment citing a hostile work environment May 7, 2015. He also received an OWI May 6, 2015.

When the claimant was hired in August 2012 he began reviewing past financial records and found some irregularities with the payroll. He requested an audit of the payroll and a special investigator from the State began looking at the city's payroll in November 2012. The claimant notified the mayor and city council he had referred the matter to the State. The State auditors issued an audit report showing errors and misappropriation of funds in excess of \$200,000.00 in the payroll. The previous city administrator misappropriated funds to pay a health reimbursement account, which was never approved by the city, to pay her husband's medical premiums, paid for massages, tanning and eyebrow tattoos for she and her family. She submitted an average of \$6,000.000 in bills of that nature not covered by her city insurance policy per year which was reimbursed by the council without their direct knowledge of what expenses they were actually reimbursing her for. The previous city administrator also endorsed pay checks for her daughter after her daughter was no longer employed with the city.

Several council members were supportive of the previous city administrator and accused the claimant of being on a “witch hunt” and became very hostile to the claimant and any ideas he put forward. One council member in particular, who was personally close to the previous city administrator, and who was a self-described “watch dog” for the city’s finances, individually asked for more documents than the public was allowed to view and which she could have viewed with the full council present. She filed three complaints against the claimant with the Iowa Public Information Board and all three complaints were dismissed as legally insufficient. The claimant was upset with this particular councilwoman because she routinely reviewed bills and expenditures prior to council meetings when council members usually asked questions of the claimant before the full public meeting set up to approve the bills and expenditures. The mayor had told the councilwoman to ask her questions during the review period rather than during the public meetings but she refused to comply with the mayor’s directions. The claimant thought her efforts were an attempt to discredit and embarrass both he and the city clerk.

The state auditor’s special investigatory report was published in the local newspaper and was on the local radio and three television stations. The previous city administrator was not prosecuted for her crimes because the statute of limitations had expired.

During the claimant’s last eight to ten weeks of employment, the mayor was on medical leave from his full-time job and spent much more time at City Hall. The mayor did not understand the claimant’s position as an exempt salaried employee and began demanding to know where the claimant was at every moment of the workday. The claimant was not allowed to take Fridays off during this time frame. The claimant previously enjoyed a good relationship with the mayor and had confided in him about his health and alcohol problems.

The claimant has post-polio syndrome and suffers from depression. He is an alcoholic and had stopped drinking in 2006. He began drinking again in January or February 2013. He started to believe the work environment was exacerbating his health issues.

On April 9, 2015, the claimant signed a new employment contract with the employer (Employer’s Exhibit B). On April 10, 2015, the claimant received a written warning from the employer after he appeared at a council meeting under the influence of alcohol. He was belligerent, argumentative and slurred his words during the meeting. The warning indicated that his behavior would not be tolerated and if it happened again the city would call the police and have a police officer administer a breathalyzer to the claimant. If he was determined to be under the influence, further disciplinary action, up to and including termination would result.

On May 6, 2015, the claimant received an OWI in Sigourney, Iowa, which is located in Keokuk County. The claimant’s employment contract stated, “E. Wrongdoing. The Employee may be terminated for conviction of a crime greater than a simple misdemeanor, unless the simple misdemeanor involves dishonesty or moral turpitude in direct relation to the Employee’s employment. Wrongdoing also includes violation of City personnel policy, use of drugs or alcohol while on duty, theft, public disorder, insubordination to the Mayor and/or City Council and actions that would disqualify the Employee for unemployment benefits” (Employer’s Exhibit B). The Employee will be considered eligible for the severance payments set forth below, unless the Employee’s termination was for wrongdoing as defined above or if the Employee voluntarily terminates employment without providing the City with the requisite notice. No severance pay will be due, except for vacation payout as provided herein, in the event this

Agreement is allowed to expire and not renewed. If the Employee is terminated, not as a result of wrongdoing as defined above, voluntarily resigns at the Employer's behest and provides the Employer with a minimum of sixty (60) days' notice, the Employer will pay a severance payment equal to the Employee's three (3) month salary at the rate of pay at the time of the termination" (Employer's Exhibit B).

At approximately 10:30 a.m. May 7, 2015, the claimant handed City Clerk Lory Young his resignation letter, which was also addressed to the mayor. The letter stated his resignation was effective immediately and he returned his keys to the building (Employer's Exhibit C). The claimant's letter stated it was due to a "long standing chronic health condition that has been severely aggregated (sic) by the stressful and hostile work environment...I will take my severance package as a lump sum and I will work out the insurance issues with (the city clerk)." At 11:00 a.m. the claimant provided an amended letter stating he was placing himself on medical leave for 60 days and then his resignation was effective immediately. He did not provide any medical documentation for his medical leave. The mayor contacted the claimant Sunday, May 10, 2015, and stated the city was going to accept his first resignation notice, making his leaving effective immediately.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code § 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.

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.

While the claimant had a difficult and contentious relationship with some of the council members, he also contributed to the poor relationship in part and on at least one occasion called them vulgar names and made comments about them that were captured on tape when the recorder for the council meeting was left on after one meeting. He complained about the council members to the mayor on several occasions as well. Although, he may have had reason to complain and dislike working with some of the council members due to their anger over the claimant contacting the State Auditor's Office to conduct an audit regarding the expenditures of the previous city administrator, who maintained friendships with her, he also had a duty to serve the council and the mayor.

The claimant argues that his work environment was stressful and hostile and that it aggravated his medical conditions. He did not provide any medical documentation to the employer or prior to the unemployment appeal hearing from a treating medical professional stating he could no longer continue to work for the employer because of the working conditions. He did provide a

doctor's note from his psychiatrist, whom he has been seeing since 2006, written nearly two months after his resignation, stating his mental health was compromised by his employment and stated his employment "materially aggravated his ongoing psychiatric conditions" (Claimant's Exhibit One). His doctor further stated the working conditions "contributed to his dismissal from the job" (Claimant's Exhibit One). The claimant indicated he had post-polio syndrome, which was not addressed with the employer or the administrative law judge by a physician's note or letter, and depression. He also stated he started drinking again in January or February 2013, after being sober since 2006.

The hostility from the council began shortly after the claimant was hired in August 2012, when he asked for a state auditor to come in and audit the city's books after he could not reconcile the payroll and the previous city administrator's financial practices. The issues between the claimant and the council continued from approximately November 2012 until his resignation but despite the stress and hostility the claimant described, he willingly signed a new contract with the city April 9, 2015. On April 10, 2015, the claimant was warned after appearing at a council meeting under the influence of alcohol, slurring his words, and acting in a belligerent and argumentative manner. Less than one month later he was arrested and charged with OWI and resigned his position the following morning.

While the claimant denies that the May 6, 2015, OWI played a role in his decision to resign May 7, 2015, the timing of the situation cannot simply be dismissed as a coincidence. He signed his new employment contract April 9, 2015, which contained the clause regarding wrongdoing and stated if he was convicted of a crime greater than a simple misdemeanor his employment may be terminated. The claimant understandably did not want to lose his severance pay and consequently after submitting his original resignation notice, which was effective immediately, he submitted a subsequent notice stating he was taking medical leave for 60 days and then was resigning. He did not provide any medical documentation to support his 60-day medical leave.

As an intelligent man, it defies logic that the claimant would not have realized his job would be in great jeopardy after the OWI became public knowledge, especially given the discord between the claimant and the council and mayor, and that would likely lead to the loss of his severance pay. It also appears that after submitting his original notice of resignation stating it was effective immediately, he wrote another notice effective 60 days later to preserve his severance pay even though he planned to use medical leave to cover those last 60 days, despite the fact he did not provide any medical documentation stating he needed to take a 60-day medical leave.

Under these circumstances, the administrative law judge must conclude the claimant has not met his burden of proving that his leaving was for unlawful, intolerable, or detrimental working conditions as those terms are defined by Iowa law.

DECISION:

The June 1, 2015, reference 01, 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/pjs