

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

HARVEY L KUNZMAN JR
1512 SOUTHFIELD PL
CLEAR LAKE IA 50428

SUPERIOR WASH INC
305 – 14TH AVE N
CLEAR LAKE IA 50428

Appeal Number: 06A-UI-01479-DT
OC: 01/01/06 R: 02
Claimant: Respondent (4/R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit
871 IAC 24.27 - Voluntary Quit of Part-time Job

STATEMENT OF THE CASE:

Superior Wash, Inc. appealed an unemployment insurance decision dated January 30, 2006, (reference 01), that concluded Harvey L. Kunzman, Jr. (claimant) was eligible for unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 23, 2006. The claimant participated in the hearing. Randy Mumm appeared on the employer's behalf and presented testimony from one other witness, Matt Berry. Administrative notice is being taken of the Agency's wage records. 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.

FINDINGS OF FACT:

The claimant started working for the employer on or about June 1, 2003. He worked part time approximately ten hours per week for the employer as a part time attendant at the employer's car wash on a Monday through Friday, 10:30 a.m. to 12:00 p.m. schedule. His last day of work was November 22, 2005.

In prior years, the claimant had written on the employer's scheduling calendar that he was taking off Thanksgiving, Christmas, and spring break. In 2004, Mr. Mumm, a part owner and president/operator, had advised that the claimant could not always have those times off, that other employees had to have an opportunity to take those times off also. In January 2005, he posted a notice that vacation must be requested directly from him for prior approval.

On the evening of November 22, Mr. Mumm saw that the claimant had again written himself out for vacation for Thanksgiving, November 24 and November 25, 2005. He called the claimant at home and advised him that it was not acceptable for him to just write the time in and take it off without prior approval. The claimant became upset with being denied the time off, and told Mr. Mumm that he was quitting. Later that night, he went to the home of Mr. Berry, a non-participating partial owner, and turned over his keys. He told Mr. Berry that he was quitting because of a difficulty getting along with Mr. Mumm.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 1, 2006. The employer paid the claimant \$909.00 in wages during the fourth quarter of 2004, which when combined with the wages from other employers was the claimant's highest quarter of earnings during his base period. His weekly benefit amount was determined to be \$176.00, based on his wages in the fourth quarter of 2004.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant voluntarily quit, and if so, whether it was for 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.

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 claimant did express his intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant 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), (23). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). The claimant 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. The claimant voluntarily quit employment without good cause attributable to the employer.

The next issue in this case is whether the claimant is disqualified from receiving unemployment insurance benefits because he voluntarily quit employment without good cause attributable to the employer.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

While the claimant quit his employment with the employer without good cause, he job was part time and the claimant has sufficient wages from another employer to qualify to receive unemployment insurance benefits. The employer's account will not be subject to charge for benefits paid to the claimant. This matter is remanded to the Agency for a recalculation of the claimant's weekly benefit amount and any overpayment that results from that recalculation.

DECISION:

The unemployment insurance decision dated January 30, 2006 (reference 01), is modified in favor of the employer. The claimant is not disqualified and the employer's account is not subject to charge because the claimant voluntarily quit part-time employment without good cause attributable to the employer. This matter is remanded to the Agency for a recalculation of the claimant's weekly benefit amount and any overpayment that results from that recalculation.

Id/s