

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JED M JOHNSON
Claimant

APPEAL NO. 11A-UI-04039-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KPTOO INC
Employer

OC: 02/27/11
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated March 25, 2011, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on April 21, 2011. The claimant participated personally. The employer participated by Ms. Nicole Rensink, manager.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jed Johnson was employed by Kptoo, Inc., doing business as McDonald's, from August 2010 until February 27, 2011, when he voluntarily left employment. Mr. Johnson was last assigned to work as a full-time shift manager and was paid by the hour. His immediate supervisor was Jennifer Vargo.

Mr. Johnson left his employment on Sunday, February 27, 2011, after being informed that he would be required to work with a disruptive male employee who was being returned from a two-week suspension that day. The employee had been written up by the company on four previous occasions for his behavior.

Approximately one month before Mr. Johnson left employment, the claimant had been physically threatened by the male employee. At that time, the employee, Renaldo, directed vile and inappropriate language at Mr. Johnson and threatened physical harm. The claimant suspended the employee and issued a disciplinary action. A number of weeks later, Mr. Johnson was required to send the same employee home after the employer had directed an especially vile and inappropriate statement to a female worker. While being reprimanded, the employee, Renaldo, swore at Mr. Johnson, yelled at him, and walked out without authorization. The claimant's immediate supervisor, Ms. Vargo, was aware of these incidents and the employee, Renaldo, was suspended for two weeks at that time. Mr. Johnson had directly

complained to his supervisor, Ms. Vargo, when both incidents had occurred, indicating that he would not continue to be employed if the disruptive worker was not separated from employment.

Although the disruptive employee had been given at least four disciplinary actions and a suspension, it appears that upper management was not aware of the matter. Mr. Johnson reasonably concluded that his complaints made to his direct supervisor, Ms. Vargo, were being forwarded to management. Although Mr. Johnson complained directly to Ms. Rensink on February 27, 2011, Ms. Rensink elected to allow the disruptive employee to return to work, whereupon Mr. Johnson left his employment with Kptoo, Inc.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment with 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.

An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. See Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if the conditions persist in order to preserve eligibility for benefits. See Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991). Claimants are not required to give notice of intent to quit due to intolerable or detrimental or unsafe working environments if the employer had or should have had reasonable knowledge of the condition. See Hy-Vee, Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005). Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer under the provisions of 871 IAC 24.26(4). The test as to whether an individual has good cause attributable to an employer for leaving employment is not a subjective test as to whether the employee themselves feel they have good cause but an objective test as to whether a reasonable person would have quit under similar circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988). See also O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

Inasmuch as the evidence in the record establishes that Mr. Johnson had brought this matter directly to the attention of company management on two or more occasions and directly informed the manager on February 27, 2011, of the issue and his reasons for leaving, the administrative law judge concludes that the claimant did give the employer proper advance notice of his reasons for quitting and gave the employer an opportunity to address or resolve the complaint. The administrative law judge also concludes, based upon the evidence in the record, that the employer had or should have had reasonable knowledge of the disruptive employee's propensities and its effects upon other employees. The disruptive employee had been given at least four documented disciplinary actions and/or suspensions for disruptive conduct. Good cause for leaving employment for reasons attributable to the employer has been established. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 25, 2011, reference 01, is affirmed. The claimant quit employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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