

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY M WARD
Claimant

APPEAL NO. 11A-UI-04235-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROQUETTE AMERICA
Employer

**OC: 02/27/11
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Roquette America, Inc. filed a timely appeal from an unemployment insurance decision dated March 23, 2011, reference 01, that allowed benefits to Jerry M. Ward. After due notice was issued, a telephone hearing was held May 9, 2011, with Mr. Ward participating. James J. Salzman, attorney at law, appeared on behalf of the employer. Vice President Dominique Baumann and Human Resources Senior Specialist Melinda Boyer testified for the employer. Employer Exhibits Four and Five were admitted into evidence. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jerry M. Ward was employed by Roquette America, Inc. from October 15, 2007, until he resigned effective February 28, 2011. He last worked as a utilities group manager, a management position.

On or about September 28, 2010, a labor dispute involving the employer commenced. As a member of management, Mr. Ward continued working, assuming additional duties, including shift work. Although he was ordinarily a salaried employee, the company began paying him \$40.00 per hour for each hour over 40 that he worked each week. The additional duties began shortly after the commencement of the labor dispute and had not changed as of the date of Mr. Ward's resignation. He did, however, receive a four percent pay raise in January 2011.

On February 7, 2011, Mr. Ward told his supervisor, Vice President Dominique Baumann, that he intended to resign effective February 28, 2011. Later in the day, Mr. Baumann asked Mr. Ward what it would take to keep Mr. Ward with the company. Mr. Ward provided Mr. Baumann a list containing three items. Mr. Baumann told Mr. Ward that he must contact his supervisor, Tom Ross, before he could give a definite answer. Before Mr. Baumann could do so, however,

Mr. Ward stated on February 9, 2011, that he was rescinding the list and would leave the company at the end of February.

Mr. Ward cited long hours, inadequate pay, and the desire to spend more time with his family as reasons for his resignation.

Mr. Ward has received unemployment insurance benefits since filing a claim during the week of February 27, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant left work with good cause attributable to the employer. It does not.

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.

Under some circumstances, an individual may receive unemployment insurance benefits after resigning because of a substantial change in the conditions of employment. See 871 IAC 24.26(1). It is undisputed that Mr. Ward's hours of work and duties increased as a result of the labor dispute. Nonetheless, there is no evidence that the additional hours and duties would have been required once the dispute was resolved. Furthermore, an individual acquiesces in a change in employment conditions if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa App. 1990). Mr. Ward had been working under the same conditions for the four months leading up to his resignation. Therefore, the administrative law judge concludes that benefits cannot be allowed under 871 IAC 24.26(1).

An individual also may be able to receive unemployment insurance benefits if the individual resigns because of intolerable or detrimental working conditions. See 871 IAC 24.26(4). While the employer pointed out that Mr. Ward had not registered his complaints about his hours of work and additional duties prior to submitting his resignation, prior notification is not required under Iowa law. See Hy-Vee v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005). Mr. Ward did not challenge the employer's evidence that other managers in similar situations were working comparable hours as he. There is no evidence that Mr. Ward was singled out for unfair treatment.

An individual is denied unemployment insurance benefits if the individual has left work because of family responsibilities or serious family needs. See 871 IAC 24.25(23). An individual is denied unemployment insurance benefits if the individual has resigned because of dissatisfaction with wages, working hours, or the general work environment. See 871 IAC 24.25(13), (18), and (21), respectively. The administrative law judge concludes that Mr. Ward left employment under circumstances contemplated by these latter four subrules. While he may have had good personal cause for leaving employment, his reasons do not constitute good cause attributable to the employer according to Iowa law. Therefore, benefits must be withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether Mr. Ward must repay the benefits he has received is remanded to the Unemployment Insurance Service Division.

DECISION:

The unemployment insurance decision dated March 23, 2011, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of repayment of benefits is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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