

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYLER C BRECHT

Claimant

APPEAL NO: 17A-UI-11157-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PETROMART STANWOOD INC

Employer

OC: 10/01/17

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Tyler Brecht, the claimant, filed a timely appeal from a representative's decision dated October 24, 2017, reference 01, was denied unemployment insurance benefits finding that the claimant voluntarily quit work on October 2, 2017 without good cause attributable to the employer. After due notice was provided, a telephone conference hearing was held on November 16, 2017. Claimant participated. Participating as a witness for the claimant were Ms. Lisa Nerton, former Manager, Mr. Chistian Palmer, personal friend and Ms. Kara Ross, former hourly employee. The employer participated by Ms. Balwinder Boyal, Owner and Mr. Gurinder Singh, Owner. The Employer's Exhibits A, B, D, E, and F were admitted into the hearing record. Claimant's Exhibits 1 and 2 were admitted into the hearing record.

ISSUE:

Whether the claimant left employment with good cause that was attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: Tyler Brecht was employed by Petromart Stanwood Inc. from August 25, 2016 until October 3, 2017 when he quit his employment by turning in his keys in anticipation that he would be discharged. Mr. Brecht was employed as a full-time cashier/cook and was paid by the hour. His immediate supervisor was Ms. Balwinder-Boyal.

Mr. Brecht anticipated that he would be discharged by the employer because he had been unable to supply a receipt or other documentation to prove that he had purchased two cartons of cigarettes that Mr. Brecht had returned to Petromart a few days earlier. At that time, Mr. Brecht had returned two cartons of cigarettes he first told the sales clerk that he had permission of Ms. Boyal to return them and they had been purchased at the Stanwood Petromart. Mr. Brecht received a \$116.63 cash refund.

One or two days later when Ms. Boyal was reviewing cash register transactions, she noted that the claimant had provided no receipts or other proof of purchase when he had returned the tobacco products for a cash refund. Mr. Brecht was aware that any tobacco products that were

being returned to the store need to be accompanied by a receipt verifying that they had been purchased at that location. Mr. Brecht had previously been put on notice about failure to follow company cash policies on 01-01-2017. In addition to the warning, Mr. Brecht lost his privilege of charging items for 90 days but he about whether further infractions would cause discharge.

When Ms. Boyal questioned the claimant about why he did not submit a receipt, Mr. Brecht provided conflicting statements about where the cigarettes had been purchased, who had purchased them, how they were purchased and why they were being returned. Based upon Mr. Brecht's most recent statement that the cigarettes had been purchased in Cedar Rapids, Iowa, and that he was in the process of obtaining a receipt from that vendor for the purchase of the cigarettes, the employer took no action at that time, but continued to require verification that the cigarettes had been purchased. The employer was concerned that Mr. Brecht may have misappropriated the cigarettes from the company and had then returned them for a cash refund because Mr. Brecht had supplied conflicting statements about why he had returned the cigarettes for cash.

Shortly before the claimant turned in his company keys on October 3, 2017, Ms. Boyal renewed her request for copies of the purchase receipts and had also asked the claimant for the telephone number of an individual that Mr. Brecht had identified as someone who might have the receipts in her possession. Mr. Brecht declined to provide the telephone number and Ms. Boyal asked the claimant to meet with her the following day to resolve the issue. The employer continued to have Mr. Brecht on the schedule to work.

On the morning of October 3, 2017, Mr. Brecht turned in his Petromart keys to Mr. Singh who was working as a cashier at the facility, and when contacted by Ms. Boyal, the claimant stated that he had already turned in his keys. Mr. Brecht was not responsive to further requests by Ms. Boyal to meet to resolve the matter, and not responsive to efforts by the company to later have the claimant return to employment.

It is Mr. Brecht's position that he had been told that if he could not produce a receipt he would be discharged from employment and as he was not able to provide proof of purchase for the two cartons of cigarettes, he concluded that he had been discharged from employment. It is the claimant's position that he did not respond to offers to meet or to return to his employment with the company because he had already moved to a new geographic area.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged from employment or quit his job. Based upon the evidence in the record the administrative law judge concludes that Mr. Brecht chose to quit his employment in anticipation of later discharge. The evidence in the record of the employer's ongoing attempts to meet with Mr. Brecht to obtain further information and resolve the matter, the employer's attempts to meet with the claimant to facilitate his reinstatement support the employer's position that the claimant was not discharged but chose to voluntarily relinquish his position with the company.

The question then is whether the evidence in the record establishes that Mr. Brecht left his employment with good cause that was attributable to the employer. It does not. Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25(29) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer. In voluntary leave cases, the claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.5(2).

In the case at hand, Mr. Brecht had previously been warned on for failing to follow the company's cash handling practices when the claimant was \$117.00 short at the end of his shift. It was later determined that the claimant had taken approximately \$100.00 of that amount for his own use without the authorization or permission of the employer. Although Mr. Brecht had returned the amount, the employer had issued him a general warning not to violate cash procedures or violate other rules while on duty. As part of the warning, the claimant lost the privilege of charging merchandise, purchased from the company for 90 days, and the underlying warning placed him on notice that further violations could result in his termination from employment. (See Employer's Exhibit B). Mr. Brecht was also aware that all individuals returning merchandise were required to present a receipt to ensure that the product returned had been purchased. State law as well as the employer's rules also prohibit employees from giving refunds on tobacco products without evidence that the products had been purchased from that business. The employer acted reasonably in questioning Mr. Brecht after it was determined he had received over \$116.00 in cash as a refund on two cartons of cigarettes without providing the required documentation establishing that the cigarettes had been purchased from Petromart Stanwood Inc.

The employer was reasonable in continuing to question Mr. Brecht about the issue after the claimant had provided a number of conflicting explanations about where the cigarettes had been purchased, who had purchased them, and why Mr. Brecht had no receipt to provide verification. Because the claimant's explanations changed, the employer continued to question the claimant about providing a receipt, it based upon the employer's suspicion that Mr. Brecht may have misappropriated the cigarettes from the employer and then returned them for cash.

Although the employer had not removed Mr. Brecht from the work schedule or told him that he was discharged, Mr. Brecht anticipated that his conduct would lead to termination when the employer continued to ask him to provide the receipt that he had stated was available, but he could not produce.

On October 3, the claimant expectantly turned in his company keys. (an act commonly associated with quitting ones employment.) After the employer was aware that Mr. Brecht had turned in his keys, the employer continued to ask to meet with Mr. Brecht to try to resolve the issue, and later asked him to come back to work. This conduct, on the part of the employer corroborates the employer's position that Mr. Brecht was not discharged but chose to leave his employment.

The administrative law judge concludes that Mr. Brecht left his employment in anticipation that the employer would discharge him for his conduct in returning cigarettes for cash that had not been purchased from the company and for being untruthful to the employer during the investigation.

Although the employer clearly had a right to discharge Mr. Brecht for his conduct and his untruthful statements during the investigation, the employer had not discharged the claimant before the claimant chose to leave employment.

Because the claimant left employment for reasons that were not attributable to the employer, he is disqualified for unemployment insurance benefits until he has worked and been paid wages for insured work equal to ten times his weekly benefits amount, provided he is otherwise eligible.

DECISION:

The representative's decision dated October 24, 2017, reference 01 is affirmed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages equal to ten times his weekly benefits amount, and is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn