

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JORY C HAMILTON
Claimant

APPEAL NO. 11A-UI-01344-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK SHOP INC
Employer

OC: 12/12/10
Claimant: Respondent (2/R)

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's January 28, 2011 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive benefits. The claimant participated in the hearing. Diane Pethoud appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits?

FINDINGS OF FACT:

The claimant started working as an associate clerk in October 2008. He worked about 32 hours a week. He and another associate, C. did not get along. They did not work the same shift, but, C. worked the shift after the claimant's, so they had contact with one another for ten minutes or so.

The claimant first had problems with C. verbally abusing him in December 2008. He reported the problem to Pethoud. She gave C. a verbal warning. Pethoud knew the claimant and C. did not like one another, but the claimant did not report any verbal abuse again until about a week prior to his employment separation.

Even before the claimant had another incident with C., he talked to Pethoud about reducing his hours and working just two nights a week after he secured another job. By working just two nights a week, the claimant would not have had any interaction with C. Pethoud agreed she would reduce his hours when he told her had gotten a second job.

In mid September or early October, C, verbally abused the claimant at work. C. noticed the money counter was broken, blamed the claimant for breaking it, and was verbally abusive toward the claimant. C.'s verbal abuse bothered the claimant a great deal. He reported the incident to Pethoud. She again talked to C. about the way he treated the claimant. She did not

give C. a written warning or discipline him any other way because there had been no reported problems since December 2008. Pethoud told the claimant she would talk to C. and that the claimant should just ignore C. The claimant concluded the employer would do nothing about C verbally abusing him.

After thinking about the problems he had with C., being frustrated that the employer would not make him a full time employee, and talking it over with his father about how easy or hard it would be to hired at another business on October 12, the claimant quit effective immediately. The claimant did not have another job when he quit, but he obtained another job within a week.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6(2).

The law presumes a claimant voluntarily quits with good cause if he leaves because of intolerable working conditions. 871 IAC 24.26(4). The law also presumes a claimant quit without good cause if he leaves because he does not like the work environment or has a personality conflict with a supervisor. 871 IAC 24.26(21), (22).

The facts establish that the claimant and C. did not like one another. Before the claimant quit, the claimant and C. interacted with one another about ten minutes when C. worked the shift after the claimant. While Pethoud knew the two men did not like one another, she did not know C. made any derogatory remarks to the claimant after December 2008 through September or October 2010. She worked with the claimant and agreed he could work two nights a week once he told her he had another job. If the claimant only worked two nights a week, C. would not be scheduled to work after him.

When the claimant reported how abusive C. was toward him in September or October 2010, Pethoud again talked to C. about his inappropriate comments. Her decision not to give C. a written warning was not unreasonable, because she had not received any reports about this kind of problem between the claimant and C. since December 2008. The claimant, however, was upset that the employer did not do anything but give C. a verbal warning.

The claimant was also frustrated because the employer would not make him a full time employee. The claimant thought it was unfair that when other employees called in sick, he was called to work, but he had to find his own replacement when he was unable to work.

The claimant established personal reasons for quitting his employment. He was frustrated and concluded that if he quit, he could easily find another job. Since the claimant did not have much contact with C. and the employer had already agreed to reduce the claimant's hours to two nights a week after he secured another job, the evidence does not establish that the claimant quit because of intolerable working conditions. The claimant did not like C. and C.'s recent outburst was inappropriate. While the employer could have disciplined C., it was not unreasonable for the employer to give C. a verbal warning again for his inappropriate behavior, since there had not been reported problems of a similar nature for about two years.

The claimant established compelling personal reasons for quitting. His reasons do not, however, qualify him to receive benefits. As of December 12, 2010, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's January 28, 2011 determination (reference 02) is reversed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of December 12, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw