

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY R HARDY
Claimant

APPEAL NO. 16A-UI-11904-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEST MANAGEMENT SUB TRS CORP
Employer

OC: 10/09/16
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 October 25, 2016, reference 01, which held claimant eligible to receive unemployment insurance benefits finding the claimant quit work on September 27, 2016 because working conditions were detrimental to the claimant. After due notice was provided, a telephone hearing was held on November 17, 2016. Claimant participated. The employer participated by Mr. Matthew Oltrogge, General Manager.

ISSUE:

The 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: Timothy Hardy was employed by the captioned employer from September 4, 2004 until September 26, 2016 when he left employment. Mr. Hardy was employed full time as an executive chef and was paid by the hour. His immediate supervisor was Mr. Matthew Oltrogge, the General Manager.

Mr. Hardy left his employment with this employer when he reasonably believed that he would be required to work the evening shift that day with a female server that previously made allegations of inappropriate conduct by Mr. Hardy.

Approximately three months before Mr. Hardy left his employment, a female server had complained to the company that Mr. Hardy had acted inappropriately by directing foul language to her and throwing an object at her. Mr. Hardy immediately attempted to complain to upper manager because the allegations were false and because he believed the server continued to make false accusations against him that would jeopardize his employment history.

After some delay, the employer indicated they would investigate Mr. Hardy's complaint about the server's false accusations. In the interim it was agreed that the company would not assign

the female worker to work on work shifts where Mr. Hardy was the chef, and if they did so, Mr. Oltrogge or another manager would be present to monitor the work shift.

In the following weeks, Mr. Hardy found that the female server had nevertheless been scheduled to work with him on several occasions and the proposed monitoring was not occurring or ineffectual. Mr. Hardy continued to complain that the employer's failure to act was creating a hostile work environment and repeatedly explained to the employer why. During the approximate three-month period, the female server often made references about Mr. Hardy to other kitchen staff that were derogatory and within ear shot of the claimant. The server on one occasion referred to Mr. Hardy who was the executive chef as being "an asshole." The statement was also made in the presence of other kitchen staff.

Mr. Hardy resigned his position via e:mail resignation during the afternoon of September 26, 2016. The claimant had been told that day that the company would take no further action in attempting to investigate his complaints against the other worker and to Mr. Hardy's knowledge, he had been scheduled to work with the female server again that night without a monitor present. After the claimant had resigned, the employer then attempted to contact him and change the schedule.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

In general, a voluntary quit requires evidence of intention to sever the employment relationship and an overt act carrying out that intention. The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code section 96.5-1. "Good cause" cannot be based upon any fault or intentional wrongdoing on the part of the employer, but may be attributable to situations in the employment itself. Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956).

The claimant in this case quit employment after he was again assigned to work with a female server who had previously made false accusations against him. The claimant had complained to company management about the conduct and although an agreement had been reached to the contrary, the employer continued to assign the female worker to work with Mr. Hardy often unmonitored by management as previously agreed. During this time the female server continued to make disparaging statements about Mr. Hardy's conduct and it appears that her ongoing comments to other employees served to erode the claimant's management authority as

the executive chef. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Services, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

In the case at hand the claimant has presented sufficient evidence to establish that he left employment with good cause attributable to the employer because working conditions were detrimental to the claimant and although given notice, the employer had not taken sufficient steps to address Mr. Hardy's concerns within a reasonable period of time. Accordingly, the claimant is qualified to receive unemployment insurance benefits, provided that he meets all other eligibility requirements.

DECISION:

The representative's decision dated October 25, 2016, reference 01, is affirmed. Claimant left 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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