

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH J DEFALCO
Claimant

APPEAL NO. 08A-UI-00269-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE RESCUE MISSION
Employer

**OC: 12/16/07 R: 04
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 4, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 23, 2008. Claimant participated with Ken Hinkel, volunteer. Employer participated through Richard Mihm. Employer's Exhibit 1 was received.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time thrift store manager from June 1997 until November 14, 2007 when he quit. Mihm called him to an initial meeting about an allegation of sexual harassment from an A. Brown. Mihm had no intention of disciplining or discharging claimant or doing anything other than discussing the anticipated investigation procedure. Claimant told him, "If I have to work with that woman [A. Brown] you can have my keys and I quit." He then said, "You can write up my three weeks' vacation I have coming to me," folded the sexual harassment policy, put it in his pocket, and walked out before the end of his shift. On November 15 at about 8:00 a.m. Mihm went to the store and met claimant there when he arrived. Claimant preempted Mihm telling him, "I know why you're here; here are my keys." He took them off the key chain, identified each with a marker, showed Mihm how the cash register worked, and loaded his personal belongings in his vehicle. He asked Mihm, "Am I fired?" and Mihm told him he had made it abundantly clear that he quit when he said he would quit if he had to work with Brown.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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.

871 IAC 24.25(6), (28) and (37) provide:

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 § 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 § 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:

(6) The claimant left as a result of an inability to work with other employees.

(28) The claimant left after being reprimanded.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

Claimant's decision to quit because of a mere allegation of sexual harassment that employer had not yet investigated or determined to apply discipline was premature and was not a good cause reason attributable to the employer for leaving the employment. Benefits are denied.

DECISION:

The January 4, 2008, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such

time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css