

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SONNY THORNTON

Claimant

APPEAL NO: 12A-UI-09053-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARVIN HEIDERSCHEIT

Employer

OC: 03-25-12

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 20, 2012, reference 03, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on September 18, 2012. The claimant participated in the hearing. Bob Reisdorf, Department Manager and Ryan Horkhimer, Department Supervisor, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time service technician for Giese Roofing Company from February 27, 2012 to July 5, 2012. On June 26, 2012, the employer received a call from a customer asking where the claimant was because the customer expected him at his house to replace his air conditioning fan motor. Neither dispatch nor Department Manager Bob Reisdorf had any record of a repair at that customer's house. Mr. Reisdorf asked the customer additional questions and was eventually told the claimant agreed to do the work on the side for cash. The claimant had been off work for two days prior to June 26, 2012, due to a work-related back injury and was excused from work until June 27, 2012. When the claimant reported for work June 29, 2012, Mr. Reisdorf met with him about the situation regarding the customer who called and issued him a written warning. The claimant was using the employer's vehicle and tools to do the work for that customer on the side and was acting in direct competition with the employer. Mr. Reisdorf told the claimant that his actions were considered stealing and the written warning stated that if that situation occurred again it would result in termination from employment. The claimant admitted he planned to do some work on the side for cash for the customer and checked the box indicating he agreed with the employer's statement of events and the consequences should the same type of incident occur in the future. The warning continued, "This is serious and will be considered theft." The claimant stated he was not feeling "up to par" due to the medication he was taking for his back and Mr. Reisdorf had Department

Supervisor Ryan Horkhimer give him a ride home. During the ride to the claimant's house the claimant told Mr. Horkhimer he was having several problems with the job and was unsure of himself as well as unsure of whether he could perform the job. The claimant then asked Mr. Horkhimer's advice about what he should do regarding his employment and Mr. Horkhimer indicated he might want to start looking for another job due to his feelings of inadequacy with the employer. Mr. Horkhimer had a good relationship with the claimant and did not want him to leave. When he returned to the office Mr. Horkhimer recounted the conversation he had with the claimant to Mr. Reisdorf, including the fact he suggested the claimant might want to pursue other employment. Mr. Reisdorf told Mr. Horkhimer it sounded like the claimant did not want to do the job or was unable to do the job and felt the claimant would probably not return to work. The employer had no plans to terminate the claimant's employment. Later that day, the claimant called Mr. Reisdorf and said he was unclear if he had been fired and Mr. Reisdorf assured him that his employment had not been terminated and if the claimant had further questions they should have a meeting with Mr. Horkhimer present July 2, 2012. The claimant testified he called Mr. Reisdorf and asked if he was fired and was told he was and then he called Mr. Horkhimer and asked if he was fired and was told he was and there was no reason to show up for the meeting July 2, 2012. He testified he called Mr. Horkhimer again to ask if he was being discharged for further confirmation and was again told he was. The employer denies any further conversation with the claimant after Mr. Reisdorf told him that his employment was not terminated and he should come in for a meeting July 2, 2012. The claimant was a no-call/no-show July 2, 3 and 5, 2012, and the employer determined the claimant voluntarily quit his job.

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 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.

While the claimant maintains his employment was terminated, the administrative law judge finds the evidence shows the claimant voluntarily left his position with the employer. Although the claimant did receive a written warning regarding performing work on the side with the employer's equipment and in direct competition with the employer June 29, 2012, the employer credibly testified it had no intention to terminate the claimant's employment. Following receipt of the written warning, the claimant expressed his insecurities about his job performance to Mr. Horkhimer and asked for his advice on how to proceed and Mr. Horkhimer suggested he might wish to seek other employment if he felt that badly about how he was doing at work, despite the fact the employer had no issues with the claimant's work performance. The claimant called Mr. Reisdorf to ask if his employment was terminated and was specifically told it was not. He was then given the opportunity to meet with Mr. Reisdorf and Mr. Horkhimer to discuss his concerns July 2, 2012, but the claimant failed to call or show up for the meeting and was also a no-call/no-show July 3 and 5, 2012. Consequently, the administrative law judge concludes the claimant voluntarily quit his job. The remaining issue is whether the claimant's leaving was for good cause attributable to the employer.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant expressed deep insecurities about his job performance to Mr. Horkhimer, even though the employer had no problem with his work and had no intention of terminating the claimant's employment. After listening to the claimant's concerns, Mr. Horkhimer suggested the claimant look for other work if he felt that badly about his job performance. Mr. Horkhimer did not initiate the conversation but instead simply responded to the claimant's request for advice and did not have any authority to discharge an employee. The employer offered to meet with the claimant to discuss his concerns but the claimant did not show up for the July 2, 2012, meeting. He was also a no-call/no-show July 3 and 5, 2012. His actions in failing to call the employer or show up for work for three consecutive workdays in violation of the employer's policy meet the definition of a voluntary leaving of employment and the claimant has not established his leaving was due to unlawful, intolerable, or detrimental working conditions at his place of employment. Under these circumstances, the administrative law judge must conclude the claimant voluntarily left his employment without good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits are denied.

DECISION:

The July 20, 2012, reference 03, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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