

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK OSWALT
Claimant

APPEAL NO. 08A-UI-03663-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RECORD TOWN INC
Employer

OC: 03/16/08 R: 02
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Mark Oswalt (claimant) appealed an unemployment insurance decision dated April 3, 2008, reference 02, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Record Town, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 30, 2008. The claimant participated in the hearing. The employer participated through Alan Elverum, Store Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time second assistant manager from June 15 2007 through February 29, 2008. On that date, the store manager found some theft had occurred in the store. He brought some empty CD wrappers to the counter where the claimant was working at the cash register in the front of the store. The store manager tried to talk to the claimant about the theft but felt the claimant was not engaged in the conversation. The store manager considered that all the employees, including himself, were at fault for the theft but actually held one employee more at fault since that employee was closer to where the theft had occurred in the back of the store. As the store manager continued to talk to him, the claimant became upset and raised his voice at the store manager. The store manager asked for the claimant's key and bank card as he was going to suspend the claimant for insubordination. The claimant immediately assumed the employer was firing him and became more upset and threw down his name tag. The store manager never told the claimant he was being suspended because the claimant was yelling at him. Likewise the store manager never told the claimant he was discharged. The claimant was not going to be discharged and since he had been there over three months, the store manager did not have the authority to discharge

him. The claimant left and did not return for his shifts on March 1, 3 or 5, 2008. The employer concluded the claimant abandoned his job effective February 29, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out when he failed to return to his three assigned work shifts ending March 5, 2008. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without cause attributable to the employer. LaGrange v. Iowa Department of Job Service, (Unpublished Iowa Appeals 1984).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

DECISION:

The unemployment insurance decision dated April 3, 2008, reference 02, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css