

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

COREY KELLEHER
2304 – 2ND ST SW
ALTOONA IA 50009

PACCHENO'S CORP
13375 UNIVERSITY AVE STE 203
CLIVE IA 50325

Appeal Number: 05A-UI-08171-BT
OC: 07/10/05 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Corey Kelleher (claimant) appealed an unemployment insurance decision dated August 1, 2005, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Paccheno's Restaurant (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 August 25, 2005. The claimant participated in the hearing with his mother, Karen Kelleher. The employer participated through President Mike Fetters, Manager Craig McWilliams, and Assistant Manager Dustin Alexander.

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 cook in this restaurant from August 25, 2004 through July 1, 2005, when he called his employer and stated he quit his employment. On approximately June 19, 2005, the claimant and the manager were horse playing in the kitchen. The manager was behind the claimant and put his hands around the claimant's neck in a chokehold. The claimant moved backwards, backing the manager into the stove. The two stopped after that and nothing more was said. The claimant later asked the manager if his neck was sore as he reported his back was sore.

The claimant called in sick for a couple days and then had his regular days off work. On July 24, 2005, the claimant went to the doctor, who diagnosed him with "lower back problems." The doctor released the claimant back to work on the following day with the admonition of, "No more wrestling." The claimant's mother stated that the admonition was directed to the manager. The claimant later went to the chiropractor, who took x-rays and provided some additional treatment.

The claimant's mother subsequently arranged a meeting with the President, the manager, the claimant and herself. All parties except for the claimant's mother referred to the incident as "horse play" but the claimant's mother called it an assault. The police were never contacted but the claimant subsequently filed a worker's compensation claim. The claimant worked through June 29, 2005 and never voiced any complaints. On July 1, the claimant called in and told another worker to tell the employer he quit. The claimant felt the employer was not accommodating his restrictions of no bending over and no reaching items off the shelf. The employer was unaware of any problems with the claimant's working conditions and it was the claimant who felt his co-workers were not helping him.

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. Iowa Code Sections 96.5-1.

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.

871 IAC 24.25(21) provides:

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 section 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 section 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:

(21) The claimant left because of dissatisfaction with the work environment.

The evidence establishes the claimant quit his employment because he did not like where he was working. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973). A reasonable person would not have quit his employment if working under the same work conditions. However, even if there was good cause to quit, the claimant never mentioned any problems to the employer so that any problems could be resolved. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him but he has not satisfied that burden. Iowa Code § 96.6-2. Benefits are denied.

DECISION:

The unemployment insurance decision dated August 1, 2005, reference 01, 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.

sdb/pjs