

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN M SARAZIN
Claimant

APPEAL NO. 11A-UI-12992-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARILYN J WALLACE
Employer

OC: 08/21/11
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Marilyn J. Wallace filed a timely appeal from an unemployment insurance decision dated September 23, 2011, reference 02, that allowed benefits to Justin M. Sarazin. After due notice was issued, a hearing was held in Davenport, Iowa, on October 25, 2011, with Mr. Sarazin participating. Ms. Wallace also participated on her own behalf, presenting additional testimony by Rae Rheem. The administrative law judge takes official notice of Agency benefit payment records.

ISSUES:

Was the separation a quit or a discharge?

Was the separation a disqualifying event?

FINDINGS OF FACT:

Justin M. Sarazin was a maintenance worker for Marilyn J. Wallace, owner of Lemar Townhouses, from January 1, 2010, until he walked off the job August 22, 2011.

At approximately 8:40 a.m. on August 22, 2011, Ms. Wallace began looking for Mr. Sarazin, who should have been setting out the garbage from the townhouse units. She could not find him. At approximately 9:10 a.m., she saw Mr. Sarazin leaving his unit. She confronted him about not being at work. He responded, "Put out your f'ing cans. I'm out of here." Mr. Sarazin did not work the rest of the day. Shortly after the conversation, Ms. Wallace called her secretary, Rae Rheem, to describe the confrontation with Mr. Sarazin. In the evening, Ms. Wallace asked for Mr. Sarazin's keys to the maintenance area.

During Mr. Sarazin's employment, he received at least two raises, including a raise of a \$1.50 per hour in June of 2011 that was made retroactive to January 1, 2011.

Mr. Sarazin has received unemployment insurance benefits since filing a claim effective August 21, 2011.

REASONING AND CONCLUSIONS OF LAW:

The first step in analyzing the evidence is to characterize the separation. It is the employer's position that Mr. Sarazin voluntarily resigned. It is the claimant's position that Ms. Wallace fired him. The evidence shows that Ms. Rheem was not a party to the confrontation between Ms. Wallace and Mr. Sarazin. Nevertheless, the evidence establishes that Ms. Wallace called Ms. Rheem and related the events essentially as she testified at the hearing. The employer's evidence that the separation was initiated by Mr. Sarazin is plausible and consistent. The fact that Ms. Wallace had recently given Mr. Sarazin a raise retroactive to the first of the year is a further indication that she would not summarily discharge him. The administrative law judge concludes that the separation was a voluntary quit.

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.

The claimant has the burden of proof. See Iowa Code section 96.6-2. The greater weight of evidence is that Mr. Sarazin resigned after a reprimand from Ms. Wallace for not being at work on time on August 22, 2011. Such a resignation is considered to be without good cause attributable to the employer. See 871 IAC 24.25. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This

subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether the claimant must repay the benefits he has received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated September 23, 2011, reference 02, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of repayment of benefits is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw