

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J LARSON
Claimant

APPEAL NO: 09A-EUCU-00541-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BODINE SERVICES OF CLINTON LLC
Employer

OC: 03/08/09
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

Bodine Services of Clinton, L.L.C. (employer) appealed a representative’s December 17, 2009 decision (reference 06) that concluded Michael J. Larson (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on February 3, 2010. The claimant participated in the hearing. Craig Sears appeared on the employer’s behalf. 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.

ISSUES:

Did the claimant voluntarily quit for a good cause attributable to the employer? Is the employer’s account subject to charge?

FINDINGS OF FACT:

The claimant started working for the employer on October 1, 2009. He worked full time as a laborer in the employer’s industrial maintenance and environmental consulting business. His last day of work was December 2. He voluntarily quit on that date.

When the claimant was hired it was for a first shift position, from 7:30 a.m. to 4:00 p.m. The claimant had been experiencing some harassment from coworkers because of concerns he was voicing over the failure to follow some safety procedures. On December 1, with very short notice, the claimant was informed he was being assigned to work on second shift, 6:00 p.m. to 6:00 a.m. He did report for the shift that night. However, the harassment from coworkers continued, including a coworker slamming the claimant’s leg in the truck door and denying him an opportunity to take a lunch break. There were also safety protocols which they were choosing not to follow. The claimant looked for the supervisor, but could not locate him on the premises. As a result, the claimant decided to leave, which he did at about 2:30 a.m.

The claimant established an unemployment insurance benefit year effective March 8, 2009. After the separation he reopened the claim by filing an additional claim effective November 29, 2009. He is currently receiving benefits under the Emergency Unemployment Compensation program.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. A substantial change in contract of hire is recognized as grounds that are good cause for quitting that is attributable to the employer. 871 IAC 24.26(1). Intolerable or detrimental working conditions are good cause for quitting attributable to the employer. 871 IAC 24.26(4). Where there are several different reasons for leaving employment, all stated reasons which might have combined to give the claimant good cause to quit must be reviewed to determine whether any of those reasons alone or in combination constituted good cause attributable to the employer. Taylor v. IDJS, 362 N.W.2d 534 (Iowa 1985).

“Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). While the employer may have had a good business reason for switching the claimant to the second shift, the change in the claimant’s schedule was a substantial change in the claimant’s contract of hire. Dehmel, supra. Further, the claimant has demonstrated that a reasonable person would find the employer’s work environment detrimental or intolerable. O’Brien v. EAB, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). Benefits are allowed.

The employer is not charged for benefits paid to the claimant under the EUC program. An employer’s account is only chargeable if the employer is a base period employer. Iowa Code § 96.7; Iowa Code § 96.19-3. Any chargeability would be determined at such point in the future that the claimant might be required to establish a new regular claim year, and then would depend on whether the wages paid by the employer to the claimant would be in the current base period for that claim year. The employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative’s December 17, 2009 decision (reference 06) is affirmed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs