

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

TRAVIS L KALMONI
APT 11
1385 MEADOWVIEW DR
MARION IA 52302

AL & IRENE'S BARBECUE HOUSE
2020 NORTHTOWN LN NE
CEDAR RAPIDS IA 52402

Appeal Number: 05A-UI-07330-DT
OC: 05/29/05 R: 03
Claimant: Respondent (2)

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 Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Al & Irene's Barbecue House (employer) appealed a representative's July 5, 2005 decision (reference 03) that concluded Travis L. Kalmoni (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 initially scheduled for August 3, 2005. However, when the administrative law judge attempted to contact the employer at the number on the Appeals Section conference call system, the employer's representative was not available. Subsequent to August 3, but before a decision was issued, the employer demonstrated that the number that had been input into the conference call system for the employer had a typographical error. Therefore a new hearing time was scheduled, and after new hearing notices were mailed to the parties, the hearing was

held on September 7, 2005. The claimant participated in a portion of the hearing. Joyce Quarterman appeared on the employer's behalf and presented testimony from one other witness, Letricia Quarterman. During the hearing, the administrative law judge admonished the claimant on several occasions not to keep repeating his entire testimony each time the employer asked him a question, and admonished him on several occasions not to interrupt the employer's representative as she was either attempting to ask him a question on cross-examination or when she was attempting to provide her testimony. Therefore, when the claimant continued to interrupt and be disruptive, he was expelled from the hearing under 871 IAC 26.14(12), and did not complete his cross-examination of the employer's representative or the additional witness. 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:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on August 10, 2004. He worked full time as a kitchen worker in the employer's restaurant. His last day of work was December 29, 2004.

On December 29, the claimant had a disagreement with another kitchen worker as to who should do what tasks and in what order. The claimant and the other worker had many prior disagreements such as this. While the two were in the closing process that evening, the other worker wanted to take care of the washing of the pots and pans different from the way the claimant understood he had been instructed to do them by the business owner, but when the other worker intervened, the claimant stopped his work on the pots and pans and went to clean a bathroom area.

When the claimant returned to the kitchen from cleaning the bathroom area, the other worker attempted to discuss the matter further with the claimant. He reached out with his hand and held the claimant's shoulder between his index finger and thumb for a moment in an attempt to get the claimant's attention, trying to tell the claimant that things would work better if they could work as a team. Ms. Quarterman, the restaurant manager, had been in the kitchen during this time, but had been bent over sweeping under some appliances. As she heard the other worker talking seriously to the claimant, she stood up in time to see the claimant moving away from the other worker. The claimant then went past Ms. Quarterman heading outside, saying, "aren't you going to do anything?" Ms. Quarterman did not know what the claimant wanted her to address, and said so. The claimant indicated he was not going to stay while the other worker was there, and he left about a half-hour early. He later called Ms. Quarterman and alleged that the other worker had shoved him to the ground; he asked to be scheduled to some other schedule where he would not have to work with the other worker. Ms. Quarterman replied that she did not have any positions available on other shifts. The claimant then indicated he could not return to work.

The next day, Ms. Quarterman spoke to the other kitchen worker and to the waitresses who had been on duty. The other worker denied that he had shoved the claimant, and denied that the claimant had been pushed to the ground. Letricia Quarterman was one of the waitresses who had been on duty, and she had been sitting on a chair by the serving window to the kitchen when the incident occurred. She watched the interaction between the two kitchen workers, and the claimant was not shoved nor did he fall or was pushed to the floor.

The claimant established a claim for unemployment insurance benefits effective May 29, 2005. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,704.03.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for 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.

871 IAC 24.25 provides that, 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 claimant did express his intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or an inability to work with other employees is not good cause. 871 IAC 24.25(6), (21). If the claimant in fact had been shoved to the ground by another worker and the employer failed to address the problem, that would be an intolerable or detrimental working condition; however, the employer has established that the claimant was not shoved to the ground or otherwise. The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's July 5, 2005 decision (reference 03) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of December 29, 2004, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,704.03.

ld/pjs