

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EVERETT L WHENNEN JR
Claimant

APPEAL NO. 08A-UI-10231-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEWTON PIZZA RANCH INC
Employer

OC: 10/05/08 R: 02
Claimant: Appellant (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Everett Whennen, filed an appeal from a decision dated October 31, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 18, 2008. The claimant participated on his own behalf and with witnesses Astrid Brown and Scott Brown. The employer, Pizza Ranch, participated by Owner Troy Knight.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Everett Whennen was employed by Newton Pizza Ranch from February 4, 2008 until September 27, 2008 as a part-time kitchen worker. On September 24, 2008, the claimant, his daughter Astrid Brown, and his son-in-law were involved in a verbal altercation with another employee, Lynn Spencer. Words were exchanged loudly and violently in the kitchen among the four of them, which eventually involved the manager on duty Amanda Andrews and John, a co-worker of Ms. Spencer's boyfriend.

When Ms. Andrews ordered John to leave the kitchen he did so. The claimant and the Browns left as well, although Astrid Brown had not yet punched in for work. Owner Troy Knight was contacted, but he was at a meeting in Maryland and unable to address the situation until he returned on September 26, 2008. On that date, he interviewed everyone except the claimant, who refused to come to the restaurant. Mr. Knight also watched the video recording of the kitchen at the time in question.

The claimant was eventually interviewed on September 27, 2008, at a local park. His version of the events, and those of the others present, had some inconsistencies that Mr. Knight, who had not been present, was unable to totally reconcile. The version of the claimant and Astrid Brown had some serious discrepancies to what Mr. Knight saw on the video. It had been alleged John had approached Mr. Whennen with his fists raised and got "chest to chest" with him, but the video shows him standing at the outside door of the kitchen and never approaching the claimant.

before he was ordered to leave by Ms. Andrews. It was also alleged John had followed Mr. Whennen to the phone when he tried to call the police, but again, John was not seen on the video to have moved from the doorway.

Mr. Knight told Mr. Whennen that with the discrepancies in the stories, he was unable to find one party more responsible than the others for the incident. He said everyone, except Astrid Brown, still had their jobs but they would be written up for the incident. Everyone would then get together to “work things out.” The claimant refused to return to work unless Ms. Spencer and Ms. Andrews were both fired. The employer declined to accept the ultimatum and the claimant quit.

REASONING AND CONCLUSIONS OF LAW:

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 maintains he quit because of a hostile work environment. However, the evidence appears to agree that he contributed to the hostile situation just as much as anyone else did. His testimony indicates he magnified the incident and the alleged threats from John and Ms. Spencer, which, whether deliberate or not, impacts his credibility.

The employer addressed the complaints and the situation, investigating carefully and observing himself the video recording. Mr. Whennen was unable to explain the discrepancies between his version of the events and what Mr. Knight personally observed on the record. The employer offered a reasonable resolution to the problem with everyone being written up for contributing to the situation and serious effort being made to work out the problems between the employees. The claimant declined to accept the employer's resolution. His decision to resign was therefore without good cause attributable to the employer and he is disqualified.

DECISION:

The representative's decision of October 31, 2008, reference 01, is affirmed. Everett Whennen Jr. is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw