

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES J BELT

Claimant

APPEAL NO. 07A-UI-06717-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KOSMITH INC

GLENWOOD MCDONALDS

Employer

**OC: 06-10-07 R: 01
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 28, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 25, 2007. The claimant did participate. The employer did participate through Aaron Smith, Supervisor. Employer's Exhibit One was received.

ISSUE:

Did the claimant voluntarily quit his employment with good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a swing manager, full-time, beginning September 13, 2004 through June 3, 2007, when he voluntarily quit his job.

The claimant was working and became embroiled in an argument with a subordinate coworker. He called the manager, Karri Newman, to enlist her help in dealing with the employee. The claimant was trying to explain to Ms. Newman what was going on while the employee was indicating that she wanted to speak to Ms. Newman also. Ms. Newman was trying to get the claimant to talk to her and explain the situation when he yelled, "I don't have to take this, I quit." The claimant then walked out of his shift and did not return until approximately two weeks later to pick up his paycheck.

When he returned to pick up his paycheck, the claimant told Mr. Smith about an incident with a different employee, J. C. Carter, a week or two prior to the June 3 incident. During the previous incident, as he handed the claimant a box, Mr. Carter had said to the claimant, "Take this box, slave." The claimant did not voice his complaint to Ms. Newman or to Mr. Smith until after he had quit his employment after the argument with the other employee on June 3. Mr. Carter was

not involved in the June 3 incident and the comment had no bearing on what occurred during that incident.

When Mr. Smith found out about the comment made by Mr. Carter, he interviewed Mr. Carter, who admitted the comment and was disciplined for making a racist comment to a coworker. The claimant had on previous occasion called both Mr. Smith and Ms. Newman to voice complaints or concerns. Mr. Smith's number is posted inside the store for employees and outside the store for customers to call with problems or concerns.

The claimant alleges that he told Sandra Frank about the comment made by Mr. Carter. Mr. Smith testified that Ms. Frank never brought the comment to his attention and that the claimant did not tell him when he came into pick up his paycheck that he had told Sandra Frank about the comment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code § 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(6) 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 § 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 § 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:

(6) The claimant left as a result of an inability to work with other employees.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

The claimant had no problem calling Ms. Newman at home when he had an issue with an employee on June 3. Yet, when the admittedly offensive comment was made to him by Mr. Carter, the claimant complained to neither Ms. Newman or to Mr. Smith, even though he knew how to reach each of them. The employer acted immediately upon the complaint when Mr. Smith heard the claimant's allegations, even though the claimant had already quit. The claimant certainly had a right to be offended by the complaint, but he also knew how to report any other problems to the managers, so he did know how to report the offensive comment.

The claimant did not mention the comment when he quit and Mr. Carter was not involved in the incident with the other employee. The administrative law judge is persuaded that the claimant

was not getting along with a coworker and decided, in a fit of temper, to quit, not because of any previous comment from weeks prior. The claimant did give Ms. Newman an opportunity to sort out the issue between him and the coworker before he quit. The claimant's quitting because of an argument with a coworker is not good cause attributable to the employer. Benefits are denied.

DECISION:

The June 28, 2007, reference 01, decision is reversed. Claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw