

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID HOLLEY
Claimant

APPEAL NO. 11A-UI-12281-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE REAL MCCOY BAR
Employer

OC: 01-10-10
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 13, 2011, reference 05, decision that allowed benefits. After due notice was issued, a hearing was held on November 17, 2011. The claimant did participate along with his witness, Lori Main, a former employee, and his wife, Christine Holley. The employer did participate through Dean McCoy, owner.

ISSUE:

Did the claimant voluntary quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a bartender/cook/waiter/dishwasher, full-time, beginning in March 2010 through August 10, 2011, when he voluntarily quit.

On August 10, 2011, there was a meeting called by the owner, Mr. McCoy for all the employees, including the claimant and his wife, Christine. Mr. McCoy was complaining about how the business had been run. Mr. McCoy's daughter (the claimant's wife) was the manager of the business. The employer was within his rights to criticize how the business was being run. The employer was not obligated to hold a private meeting with any of the employees or to give them a warning that he was going to critique the employee's performance. The employer had received complaints from customers about the service and had witnessed problems with the service himself. Mr. McCoy had also noticed that sales had dropped off. The claimant thought that Mr. McCoy should run the business differently and should not critique the employees' performance. The claimant was Mr. McCoy's son-in-law and had problems with how Mr. McCoy did not appreciate him enough compared to other employees.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without 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(22) and (28) provide:

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 section 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 section 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:

(22) The claimant left because of a personality conflict with the supervisor.

(28) The claimant left after being reprimanded.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant could not get along with the owner of the business, who also happens to be his father-in-law. As the owner of the business, Mr. McCoy was allowed to determine how he wanted it run. He was allowed to call a group meeting to discuss problems or to even discipline employees if he so chose. The claimant did not agree with Mr. McCoy's assessment of the business and his complaints, so he voluntarily quit. While claimant's decision to quit may have been based upon good personal reasons, it was not a good-cause reason attributable to the employer for leaving the employment. Benefits must be denied.

While benefits were awarded by the representative's decision, none have been collected by the claimant. Hence, no overpayment applies.

DECISION:

The September 13, 2011 (reference 05) decision is reversed. The 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