

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES CUNNINGHAM
Claimant

APPEAL NO: 13A-UI-09958-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSDEN BLDG MAINTENANCE LLC
Employer

**OC: 07/28/13
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 29, 2013, reference 02, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on September 26, 2013. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant voluntarily left his employment with 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 part-time custodian for Marsden Building Maintenance from July 26, 2011 to July 27, 2013. He voluntarily quit his job because he feared that if another employee kept pushing him they would have a physical fight and end up in jail.

The claimant worked as a janitor at Merle Hay Mall. One of his co-workers, Wilfredo, made his work life much more difficult and created additional work for the claimant to do by shaking dust mops over the carpet the claimant had just vacuumed and exhibited other similar behaviors that frustrated the claimant. The claimant complained to his supervisor, Gus, but Wilfredo and Gus were friends and Wilfredo was helping Gus with his immigration paperwork, so the claimant believed Gus never followed up on his complaints by speaking to Wilfredo about his actions.

During the last week of the claimant's employment, Wilfredo was moved to another location and the claimant felt Gus was "frowning" at him and giving him "dirty looks." Consequently, the claimant believed Gus was upset with him for complaining about Wilfredo and also believed a

physical fight with Gus was imminent due to the way Gus was looking at him. As a result the claimant decided to voluntarily quit his job because he was afraid they would have a fight and both go to jail.

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 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

While the claimant believed Gus might physically attack him at any time, the fact that Gus gave him frowns and dirty looks does not mean the next step was going to be a fist fight or that the claimant would land in jail as a result. Under these circumstances, the administrative law judge must conclude the claimant has not established that his leaving was for unlawful, intolerable or detrimental working conditions as those terms are defined by Iowa law. Therefore, benefits must be denied.

DECISION:

The August 29, 2013, reference 02, decision is affirmed. 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs