

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN L TINDALL
Claimant

APPEAL NO. 09A-UI-00366-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CNE LTD
Employer

**OC: 10/19/08 R: 03
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Stephen Tindall filed an appeal from a representative's decision dated December 31, 2008, reference 01, which denied benefits based on his separation from CNE, Ltd. After due notice was issued, a hearing was held by telephone on February 16, 2009. Mr. Tindall participated personally and Exhibit A was admitted on his behalf. The employer participated by Jason Martin, Manager. Exhibits One through Five were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Tindall was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Tindall was employed by CNE, Ltd. From January 4 until July 15, 2008. He was hired to work full time recruiting new employees for other employers. He worked pursuant to written contracts that were issued in three-month increments. His pay was based on a percentage of the fee paid by a business for recruits. All of the employer's recruiters are assigned job categories in which they are expected to recruit. If a recruiter develops a candidate outside his or her field of expertise, he or she may be entitled to a split of the commission with the recruiter that would handle that particular field.

Mr. Tindall's initial contract specified that he was to recruit in the supply chain field. He signed a new contract in April that called for him to recruit in the human resources and accounting fields. On July 3, he was presented with a new contract that specified he was to continue recruiting in the human resources and accounting fields. Mr. Tindall was unhappy with the contract because he wanted to continue to be able to recruit engineers for a specific employer, Dueco. He could still receive a split of the commission if he developed an engineering candidate that was subsequently placed by another recruiter that handled engineers.

Mr. Tindall was discussing the new contract with his manager, Jason Martin, on July 15. He voiced his displeasure with the new contract and asked Mr. Martin what he would do in a similar

situation. Mr. Morgan indicated he would quit. Mr. Tindall did not return to work after July 15. Continued work would have been available if he had continued reporting for work.

Mr. Tindall objected to the conduct of some of his coworkers. A fellow recruiter sent him an email on July 10 that Mr. Tindall found objectionable because it was sexually suggestive. He also found the sex-oriented conversations at the office objectionable. He never complained to the manager or the owner about the conduct of his coworkers.

REASONING AND CONCLUSIONS OF LAW:

Although Mr. Tindall contended that he was discharged, the administrative law judge concludes to the contrary. Mr. Morgan never fired him or in any way suggested that the employer wanted to end the employment relationship. Mr. Morgan's statement that, under similar circumstances, he would quit was not a statement of discharge. He was telling Mr. Tindall, in essence, that if he was as unhappy as Mr. Tindall appeared to be, he would quit the job. It was up to Mr. Tindall to decide if he wanted to quit. He chose not to remain in the employment. For the above reasons, it is concluded that he voluntarily quit.

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Tindall has given two reasons as to why he was unhappy with his employment. One of his contentions is that the employer misrepresented his job in terms of what fields he could recruit in. He knew from the contract he signed in April that his efforts were to be directed to the human resources and accounting fields. The contract he was offered in July did not have any material changes over the contract he signed in April. The employer did not expect Mr. Tindall to actively recruit in the engineering field and he was never told he could do so. He would continue to be eligible to receive a split of the commission if a candidate he developed was placed by a different recruiter. He received a split of the commission on two of the three engineering placements he made during the course of his employment in spite of the fact that engineering was never the field specified in his prior contracts.

The other reason cited by Mr. Tindall as a reason for leaving concerned the conduct of his coworkers. Although he found some of their conduct objectionable, he never put the employer on notice that he intended to quit if the situation was not corrected. Mr. Morgan denied that Mr. Tindall ever raised concerns about his coworker's behavior. Even if Mr. Tindall's testimony that he had brought the problem to Mr. Morgan's attention was believed, he acknowledged that he never complained above Mr. Morgan when the objectionable conduct continued. He could have gone to the owner if it he did not feel Mr. Morgan was resolving the matter, but he did not do so.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that good cause attributable to the employer has not been established. As such, benefits are denied.

DECISION:

The representative's decision dated December 31, 2008, reference 01, is hereby affirmed. Mr. Tindall voluntarily quit his employment for no good cause attributable to the employer. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs