

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DANILO T AUREA SR
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Appeal Number: 04A-UI-05097-RT
OC: 11/16/03 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Danilo T. Aurea, Sr., filed a timely appeal from an unemployment insurance decision dated April 27, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on May 25, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Tim Prenevost, Human Resources Manager, participated in the hearing for the employer, All-States Quality Foods, L.P. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time sanitation person from June 21, 2000 until he voluntarily quit on March 17, 2004. On that day, the claimant walked off the job before the end of his shift because he got into an altercation with his supervisor. The claimant was asked to perform another assignment, which he refused and walked off the job. The next day the claimant returned to work with a letter provided to human resources but at that time he did not offer to go back to work and in fact, indicated that he did not want his job back. In the letter, the claimant stated that he had walked off the job before the end of his shift because he was asked to work in an area where he didn't want to work. The employer, however, reserves the right to assign employees to tasks or positions where needed. The claimant made also some illusion to discrimination. The claimant had never expressed any concerns to the employer's witness, Tim Prenevost, Human Resources Manager, about his working conditions nor had he done so to anyone else that Mr. Prenevost heard about. The claimant had also never indicated or announced an intention to quit prior to his quit to Mr. Prenevost or anyone else that Mr. Prenevost heard about.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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(6), (22), (27) 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 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.

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

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

(27) The claimant left rather than perform the assigned work as instructed.

The employer's witness, Tim Prenevost, Human Resources Manager, credibly testified that the claimant quit by walking off the job on March 7, 2004, and the administrative law judge so concludes. The issue then becomes whether the claimant left his employment without good

cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide reasons attributable to the employer for his quit. Mr. Prenevost credibly testified that the claimant quit voluntarily because he had an altercation with his supervisor and did not want to perform the work as assigned. Leaving work because of an inability to work with other employees or because of a personality conflict with a supervisor or leave work rather than perform the assigned work as instructed are not good cause attributable to the employer. The claimant, in a letter provided to the employer the next day after his quit, indicated that the claimant felt some kind of discrimination. However, the claimant did not participate in the hearing to provide any evidence of such discrimination. There is not a preponderance of the evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. There is also no evidence that the claimant ever expressed any concerns to the employer about his working conditions or that he ever indicated or announced an intention to quit prior to his quit. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision dated April 27, 2004, reference 01, is affirmed. The claimant, Danilo T. Aurea, Sr., is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits.

kjf/b