

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HORACE D CUNNINGHAM
Claimant

APPEAL NO. 08A-UI-09884-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABM LTD
Employer

OC: 08/03/08 R: 02
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Horace D. Cunningham filed a timely appeal from an unemployment insurance decision dated October 20, 2008, reference 01, that disqualified him for benefits following his separation from employment with ABM, LTD. After due notice was issued, a telephone hearing was held November 18, 2008 with Mr. Cunningham participating and being represented by Nolden Gentry, Attorney at Law. Exhibits One through Three were admitted into evidence on his behalf. Allison Doherty, Attorney at Law, appeared on behalf of the employer. Carlos Cardenas and Donarene Grenell testified, and Exhibit A was admitted into evidence.

ISSUES:

Did the claimant voluntarily leave employment without good cause attributable to the employer?
Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Horace D. Cunningham was a maintenance worker for ABM, LTD from January 1, 2008 until July 18, 2008. Mr. Cunningham performed his services for the company at the offices of Principal Financial Group.

On the evening of July 17, 2008, Mr. Cunningham's supervisor, Kim Garcia, and Area Manager Carlos Cardenas visited him at the job site and told him of a complaint they had received earlier in the day about a soap dispenser not having been filled. An argument ensued. Mr. Cardenas suspended Mr. Cunningham with instructions to call him on the following Monday, July 21st.

On July 18, 2008, Mr. Cunningham went to the offices of ABM, LTD, turned in his uniform shirts and asked to speak to Operations Director Donarene Grenell. During the meeting with Ms. Grenell, Mr. Cunningham stated, "Good luck finding someone to do this job." He then left her office. The employer interpreted Mr. Cunningham's statements and actions as a resignation.

REASONING AND CONCLUSIONS OF LAW:

The first step in analyzing this evidence is to characterize the separation. Mr. Cunningham testified that he felt that he had been discharged by Mr. Cardenas because Mr. Cardenas did not return phone calls to him that were placed after his meeting with Ms. Grenell. The employer witnesses testified that they believed that Mr. Cunningham had resigned because of his words and actions at the company office on July 18, 2008. The administrative law judge here notes an inconsistency in Mr. Cunningham's testimony. On direct examination he testified that he had left his uniform shirts at the office on the morning that he spoke to Ms. Grenell. On rebuttal, however, he testified that he did not drop off the shirts until two weeks later. The earlier testimony is consistent with the testimony of Ms. Grenell. The administrative law judge finds that the greater weight of evidence supports the finding of fact that the shirts were dropped off on July 18, 2008.

This is significant because in order to find a voluntary quit, the administrative law judge must find evidence of an intent to sever the employment relationship and an overt act in furtherance of that intent. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's statement to Ms. Grenell expresses an intent to sever the employment relationship. Leaving his uniform shirts with the employer is an overt act consistent with that intention. From this the administrative law judge concludes that Mr. Cunningham resigned his position.

The remaining question is whether he left employment with or 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.

The claimant has the burden of proof. See Iowa Code section 96.6-2. An individual who resigns because of a personality conflict with a supervisor or because of a reprimand leaves work without good cause attributable to the employer according to 871 IAC 24.25(22) and (28). The evidence in the record establishes that Mr. Cunningham had been reprimanded and suspended on the evening of the 17th. His testimony also indicates an undercurrent of conflict between himself and Mr. Cardenas. The administrative law judge concludes from the evidence that the claimant left work without good cause attributable to the employer. Benefits must be withheld.

DECISION:

The unemployment insurance decision dated October 20, 2008, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs