

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA FIELDS
Claimant

APPEAL NO. 10A-UI-08765-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CIGARETTE OUTLET INC
Employer

OC: 03/07/10
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Cigarette Outlet, Inc. filed a timely appeal from a representative's decision dated June 10, 2010, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on August 5, 2010. The claimant participated personally. The employer participated by Ms. Debra Schnyder, supervisor.

ISSUE:

At issue is whether the claimant voluntarily left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Joshua Fields was employed as a part-time clerk for Cigarette Outlet, Inc. from April 13, 2010, until May 6, 2010, when the employer reasonably concluded that the claimant left employment by failing to report or provide notification for three consecutive workdays.

In his position as a part-time clerk for Cigarette Outlet, Inc., Mr. Fields was required to attend training for the sale of tobacco products. The employer had made arrangements for Mr. Fields to attend training in Iowa City, Iowa, and again in Coralville, Iowa. The employer had arranged the training for a number of employees on the same dates, believing that Mr. Fields would avail himself of "carpooling" to one of the training sessions. Mr. Fields did not attend the training sessions, as they were too far from his residence in Cedar Rapids, Iowa, and he could not afford public transportation. Mr. Fields requested the training be scheduled in a location closer to Cedar Rapids, Iowa. The employer arranged a training session for Mr. Fields at the Cedar Rapids police facility approximately one block away from Cigarette Outlet, Inc. The training was scheduled to take place on May 4, 2010. The claimant was scheduled to work on May 3, to attend training on May 4, and to work again on May 5, 2010. Schedules are posted in the workplace in advance of the work week. Mr. Fields worked under the supervision of Debra Schnyder, the supervising manager, and Michelle Kelty, the store manager. Although Mr. Fields was scheduled to work or to attend classes on May 3, 4, and 5, 2010, he did not report or provide any notification to the employer or have any further contact with the company.

Mr. Fields had discontinued reporting for available scheduled work after company management had raised the issue of missing funds.

It is the claimant's position that after he had missed the two initial training sessions, he had been told by "Margaret," a part-time employee, "You're about to get fired...you might as well not come back." It is Mr. Fields' position that he interpreted this statement to mean that he had been discharged, because this individual was dating a supervising manager's son and, at times, had given orders to other hourly employees.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes good cause for leaving attributable to the employer. It does not.

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 evidence in the record does not establish that Mr. Fields was discharged from employment. A part-time hourly employee had ventured an opinion that Mr. Fields was "about to get fired" because he had not attended two scheduled training sessions. The hourly employee then offered her opinion, "You might as well not come back." The test as to whether these rhetorical statements inform an individual that he or she is being discharged is not a subjective test as to whether the employee themselves reaches that conclusion but an objective test as to whether a reasonable person would draw that conclusion under similar circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988). The administrative law judge concludes that a reasonable person would not consider these statements as a discharge. In addition, Mr. Fields was familiar with both the supervisory manager that had hired him as well as the store manager. The claimant did not go to either individual to confirm his status, although his name continued to be on company scheduling for several days in the future. The company handbook provides the names of management individuals and telephone numbers for employees to reach if they have any work-related questions.

Having concluded that the claimant was not discharged from employment, the question becomes whether Mr. Fields has established good cause attributable to his employer for leaving employment. He has not.

After being informed by Mr. Fields of his difficulty in attending training in Iowa City or Coralville, Iowa, the employer made arrangements to have Mr. Fields attend training one block away from its facility located in Cedar Rapids, Iowa, the city where Mr. Fields resides. The administrative law judge concludes, based upon the totality of the evidence in the record, that Mr. Fields left his employment in anticipation of being discharged after he had missed two training sessions and the employer had raised the issue of missing funds. At the time the claimant chose to discontinue reporting for scheduled work, he had not been informed by any individual with management authority in the company that he was being terminated and work continued to be available to Mr. Fields had he chosen to report.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Based upon the application of the facts and the appropriate law, benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay the unemployment insurance benefits he has received is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated June 10, 2010, reference 02, is reversed. The claimant quit employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment insurance benefits he has received is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw