

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARI KAREEM

Claimant

APPEAL NO. 10A-UI-09943-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC

Employer

OC: 05/23/10

Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated July 2, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on August 30, 2010. Claimant was duly notified. The claimant did not respond to the notice of hearing and did not participate. The employer participated by Michael Nicolosi, Branch Manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer and whether the claimant contacted the employer for additional work assignments within three working days.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Mr. Kari Kareem was employed through Labor Ready Midwest, Inc. beginning on June 30, 2008. The claimant was most recently assigned to work at the Select Comfort Company beginning on August 8, 2009. Mr. Kareem remained in that position until January 15, 2010 when the claimant removed himself from availability to take assignments for a number of days in preparation of moving to a different global locality.

The claimant's failure to report for scheduled work on January 15, 2010 and his failure to provide any further notification to the employer or report for three or more consecutive work days led the employer to reasonably conclude that the claimant relinquished his position and the claimant was considered to have voluntarily quit his most recent assignment. The employer had no further contact from Mr. Kareem until approximately one month later.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily left 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.

The evidence in the record establishes that Mr. Kareem chose to leave an ongoing assignment for personal reasons. The claimant indicated on January 15, 2010 that he was not available to report to his ongoing assignment. The employer had no further contact with the claimant until February 14, 2010. Based on the claimant's failure to report for his ongoing assignment and failure to provide any further notification for three or more consecutive work days, the employer reasonably concluded the claimant had chosen to voluntarily quit his assignment with the company.

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.

For the reasons stated herein the administrative law judge concludes left employment without good cause attributable to the employer. Unemployment insurance 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.

DECISION:

The representative's decision dated July 2, 2010, reference 01, is reversed. Claimant voluntarily 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 unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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