

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERNEST D WILLISHER
Claimant

APPEAL NO: 14A-UI-09083-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF NASHUA
Employer

OC: 08/10/14
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 27, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive benefits. Before an October 14 Waterloo, Iowa, hearing was held, a pre-hearing conference was held on September 26, 2014.

The September 26 pre-hearing conference addressed the claimant's resistance to the employer's subpoena to compel the claimant to attend the in-person hearing. The employer requested a subpoena for the claimant to appear at the October 14 unemployment insurance hearing because the claimant failed to testify at his appeal before the City Council and at the fact-finding interview. At the September 26 prehearing conference, the employer's subpoena request was denied. The request was denied because an interested party can attend or decline to attend a hearing. In this case, the claimant has not filed any weekly claims and the employer's account has not been charged. The claimant also is working and would have to take off time from work to attend a proceeding that he has nothing at stake. More importantly, to requiring the claimant to attend the hearing because he did not testify at previous proceedings is not relevant to the issue before this administrative law judge. The administrative law judge concludes the employer's request creates undue burden on the claimant and the reason for the subpoena is not relevant to establish the reasons for the claimant's employment separation that occurred in August. 871 IAC 26.13(6).

Sarah Reindl informed the administrative law judge and David Skilton that neither she nor the claimant would participate at the October 14 hearing in Waterloo and they did not. During the pre-hearing conference, the claimant requested various documents be considered in lieu of the claimant's testimony. This request was granted and these documents have been collectively identified as Claimant Exhibit A.

At the October 14 hearing, David Skilton, the employer's attorney represented the employer. Deanne Lantow, the mayor, Tabitha Caswell, the city clerk, and Chief of Police Paul Bechtold testified on the employer's behalf. During the hearing, Employer's Exhibit One through Eleven were offered and admitted as evidence.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer 26 years ago. The claimant worked as a full time police officer. Prior to July 2014, the claimant had been working as the Chief of Police.

The claimant had been off work for about three months after he was injured in an off-duty accident. The claimant returned to work on June 2, 2014. The last day the claimant performed services for the employer was June 17, 2014.

On June 20, Mayor Lantow told the claimant she was removing him as the chief of police, but he would still work as a police officer. His pay and benefits were not changed. (Employer Exhibit Five.) On July 2, 2014, the claimant filed a discrimination complaint against the employer and Mayor Lantow. (Claimant Exhibit A.) On July 7, the employer's city council officially removed the claimant as the chief of police and gave him a 3% raise. The claimant requested vacation from July 9 through August 12, 2014. This request was granted. (Employer Exhibit Five.) During the weekend of August 2-3, the claimant's uniform, radio, keys, bullet proof vest and gun were left at the employer's office. On August 4, the claimant requested an IPERS form. (Employer Exhibit Five.)

The claimant established a claim for benefits during the week of August 10, 2014. The claimant has not filed any weekly claims.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The evidence indicates the claimant made the decision to end his employment when he brought back his uniform and equipment the weekend of August 2-3. This conclusion is supported by the fact the claimant did not return to work after his vacation ended, he did not perform any services for the employer since June 17, 2014, and requested an IPERS form on August 4. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6(2).

The parties are involved in a number of legal proceedings. Based on the exhibits and the testimony presented at the hearing, the evidence suggests there are several possible reasons that the claimant decided to quit. Since the claimant did not participate at hearing, the evidence does not establish that he quit for reasons that qualify him to receive benefits. It is not an administrative law judge's duty to speculate why a claimant quit. The claimant is responsible for establishing why he quit. Since the facts do not establish that the claimant quit in early August for reasons that qualify him to receive benefits, the claimant is not qualified to receive benefits.

During the hearing, the employer asserted that if the claimant had been at the hearing, the employer could have established that claimant committed misconduct and would have

discharged him. The problem with this argument is that the employer did not discharge the claimant. In the alternative, the employer asserted the claimant did not return to work because he knew the employer discovered some issues that had legal implications for him. While this assertion may or may not be true, the bottom line is that the claimant did not establish that he quit for reasons that qualify him to receive benefits. As of August 10, 2014, the claimant is not qualified to receive benefits.

The parties need to remember that this decision is only binding to the parties to proceedings brought under Chapter 96 and is **NOT** binding upon any other proceeding or action involving the same facts brought by the same or related parties before the division of labor services, division of industrial serves, another state agency, arbitrator, court, or judge of state or the United States. Iowa Code § 96.6(4).

DECISION:

The representative's August 27, 2014 determination (reference 01) is reversed. The claimant voluntarily quit his employment. Based on the evidence presented at the hearing, the claimant did not establish that he quit for reasons that qualify him to receive benefits. As of August 10, 2014, the claimant is not qualified to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs