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

DAYTHON B LAMAR
Claimant

APPEAL NO. 11A-UI-04729-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC
Employer

**OC: 02-20-11
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 29, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 6, 2011. The claimant did participate. The employer did not participate as Rochelle Jordan did not answer the telephone when called to begin the hearing. Official notice was taken of agency records.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a customer service representative full time beginning December 13, 2010 through February 14, 2011 when he voluntarily quit. While not on work time, the claimant's work-trainer sent him a message from his personal face book account asking if he was interested in modeling for him. The claimant told the man that he was not interested in modeling. The claimant felt uncomfortable about being asked to model as he had heard rumors that the trainer, who had told him he was gay, had asked other employees to model for him in the nude. The very next work day the claimant worked he reported to Joe Meese in human resources that the trainer had asked him to model for him and that the request made him uncomfortable. The claimant showed Mr. Meese the face book messages he received from the trainer. Mr. Meese investigated immediately and called the claimant the next day to tell him that the situation had been resolved. According to agency records, at the fact-finding interview the employer reported that the trainer had been fired. The claimant would never have been required to work with that trainer again as the employer acted immediately upon receiving his complaint and the offending trainer was discharged. The claimant quit his employment anyway.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 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 proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). Claimant was not required to give notice of his intention to quit due to an intolerable, detrimental or unsafe working environment if employer had or should have had reasonable knowledge of the condition. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). The employer would have no idea what the trainer was doing on his off work time. Once the claimant complained, the employer acted that same day to discharge the offending employee. The claimant never would have been required to work with the offending employee again. The offending events happened outside of the workplace and outside of work time. The employer acted immediately to provide a safe harassment free workplace for the claimant. Under such circumstances the administrative law judge cannot find that the claimant's quit was with good cause attributable to the employer. While claimant's decision to quit may have been based upon good personal reasons it was not a good-cause reason attributable to the employer for leaving the employment. Benefits must be denied.

DECISION:

The March 29, 2011 (reference 01) decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

_____
Teresa K. Hillary
Administrative Law Judge

_____
Decision Dated and Mailed

tkh/pjs