

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DANIEL R POLSON
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DES MOINES IA 50321

DES MOINES REGISTER & TRIBUNE
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-12827-RT
OC: 11-07-04 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Daniel R. Polson, filed a timely appeal from an unemployment insurance decision dated November 24, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on December 22, 2004 with the claimant participating. Sue Decker, Program Manager, and Stephen G. Cipperley, Zone Manager, participated in the hearing for the employer, Des Moines Register and Tribune. Employer's Exhibit 1 was admitted into evidence.

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: The claimant was employed by the employer as a full-time district manager in its circulation department from April or May 1997 until he voluntarily quit effective August 1, 2004. On or about July 26, 2004, the claimant gave to his supervisor, Stephen G. Cipperley, Zone Manager and the employer's witness, a short written resignation as shown at Employer's Exhibit 1 indicating that he was quitting effective August 1, 2004. The claimant quit because his previously approved vacation from August 2 through August 8, 2004 was denied. The claimant was employed by the employer seven and one-half years and had accumulated three weeks of vacation. In April 2004, the claimant requested his three weeks of vacation; July 5 through July 11, August 2 through August 8, and November 15 through November 21. He informed Mr. Cipperley of this and the dates were placed on the calendar. Mr. Cipperley told the claimant at that time that at least the first two weeks of vacation looked acceptable and were fine. The claimant explained to Mr. Cipperley that he wanted the vacation from August 2 through August 8, 2004 because there was a possibility that his daughter might be playing in a national softball tournament and he was going to take a chance and apply for vacation now in case her team made the tournament. The employer's vacation policy is not exactly clear but, apparently, the sooner an employee requests vacation, the more secure that vacation is so that others with more seniority cannot take those weeks and prevent the employee from taking a week that he wants. In any event, the claimant believed that the first two weeks of his vacation were approved.

The softball team of the claimant's daughter was admitted into the national tournament and he reserved a group hotel reservation which was non-refundable, at least for two weeks prior to the event. While he was on his first vacation in July 2004, the employer decided to conduct a major promotion of the opening of the Jordan Creek Mall and, therefore, denied all managers' vacation for that week. This decision was made after the claimant had already requested and obtained approval for his first two weeks of vacation as noted above. When the claimant returned from his vacation in July 2004, on or about July 25, 2004, he learned that his vacation had been denied. The claimant talked to Mr. Cipperley for three or four hours on July 26, 2004 and even called the boss of Mr. Cipperley but the claimant learned that he was not going to be allowed to take his vacation from August 2 through August 8 which had already been approved. The choice for the claimant was to resign and go on the vacation, refuse the vacation and continue working for the employer, or apparently take his vacation and return and be discharged. The claimant chose to resign. He did so by preparing the brief written resignation as noted above. The employer's policy does make some provision for the employer's efforts to accommodate employees' requests but offers as an exception the operating necessity or business needs of the employer.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was 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.

871 IAC 24.25(25) 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.

(25) The claimant left to take a vacation.

871 IAC 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The parties agree, and the administrative law judge concludes, that the claimant left his employment voluntarily on August 1, 2004. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. Although it is a close question, the administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The testimony of the parties is remarkably similar except for the date when the claimant learned that his vacation request for August 2 through August 8 was denied and whether the claimant had filled out an actual written form requesting vacation. Otherwise, the parties agree that the claimant had accumulated three weeks of vacation and in April 2004 he chose his three weeks; July 5 through July 11 (or July 6 through July 12), August 2 through August 8, and November 15 through November 21. The parties also agree that at least the first two weeks were approved by the claimant's supervisor, Stephen G. Cipperley, Zone Manager and the employer's witness. The approval was oral and the claimant placed those dates on the vacation calendar. Whether the claimant actually submitted written forms for the three vacations is not clear. The claimant testified he did; Mr. Cipperley testified that he did not. The administrative law judge concludes that the claimant did, in some fashion, fill out some form or in some writing indicate his choice of vacations. They were approved. The parties also agree that the claimant explained to Mr. Cipperley in April that for the week of August 2 through August 8 he was taking vacation to reserve that time for a possible national softball tournament in which the claimant's daughter might participate. The softball tournament materialized and the claimant made plans to go to the softball tournament including booking group hotel reservations which were non-refundable at least two weeks before the tournament. Then, the claimant learned that his vacation request for that period from August 2 through August 8, 2004 was denied. The claimant testified that he learned this on July 25, 2004. Mr. Cipperley testified that he told the claimant approximately July 13 or July 14, 2004. Mr. Cipperley equivocated in his response and the claimant did not, so the administrative law judge finds the claimant more

credible and determines that the claimant did not learn about a denial of his vacation until July 25, 2004. This is also confirmed by the fact that the claimant then spoke to Mr. Cipperley on July 26, 2004 for a number of hours about the vacation request. The administrative law judge believes that the claimant would immediately, upon learning of the denial of his vacation request, consult the employer so this would indicate the claimant did not learn of the denial until July 25, 2004. When the claimant discussed this matter with Mr. Cipperley on July 26, 2004, he was informed that the claimant would not be allowed to take his vacation despite the claimant's request and despite the fact that the claimant's daughter was playing in a national softball tournament and despite the fact that the claimant had non-refundable hotel reservations. The reason was that the employer had decided in early July 2004 to make a major promotion of the opening of the Jordan Creek Mall and needed all managers present. There is also some indication that the claimant needed to improve his numbers and his productivity and needed to be present for this large promotion. Because of the arrangements already made by the claimant and because of the approval previously received, the claimant chose to resign rather than give up his vacation or go to the vacation and be discharged when he returned.

Although it is a very close question, the administrative law judge is constrained to conclude in this matter that the claimant's quit was for good cause attributable to the employer. The claimant had explained to his supervisor in April the reason for the vacation and had reserved the vacation by, at least, putting it on a calendar and it had been approved. The employer, then, at the last minute, denied or revoked the request. The claimant had good reasons for this vacation. It is true that leaving employment voluntarily to take a vacation is not generally good cause attributable to the employer but, here, the administrative law judge concludes that it is good cause attributable to the employer because the claimant had done everything he could to reserve that time and was counting on that time and had relied upon the employer's approval by booking hotel reservations which were non-refundable at the time the claimant learned of the denial of his vacation. It may well be that the employer wanted all of the managers to be there but the administrative law judge cannot believe that the employer could not have managed its Jordan Creek Mall promotion without the claimant's participation. If the claimant had had some kind of serious family emergency or illness, the employer would have had to replace the claimant or make due without him. The employer should have been able to replace the claimant or make due without him because of the vacation. The fact that the employer chose not to do so convinces the administrative law judge that the employer's actions were intolerable and detrimental and established good cause for the claimant's quit. This is a difficult issue to resolve. The administrative law judge in no way condones an employee for quitting simply to take a vacation. However, the administrative law judge must conclude here that there was much more at stake than that. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily with good cause attributable to the employer, and, as a consequence, he is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided he is otherwise eligible.

DECISION:

The representative's decision of November 24, 2004, reference 01, is reversed. The claimant, Daniel R. Polson, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he left his employment voluntarily with good cause attributable to the employer.

tjc/tjc