

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL E CARTER
Claimant

APPEAL NO. 10A-UI-10216-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTAR FOODS INC
Employer

OC: 04/11/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated July 14, 2010, reference 01, which denied benefits based upon the claimant's separation from Westar Foods Inc. After due notice, a telephone hearing was held on September 2, 2010. The claimant participated personally. The employer participated by John Kelchen, District Manager.

ISSUE:

The issue is whether the claimant voluntary left employment with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Paul Carter was employed by Westar Foods Inc. from December 16, 2008 until April 13, 2009 when his resignation went into effect by mutual agreement of the parties. Mr. Carter held the position of full-time restaurant manager and was paid by the hour. His immediate supervisor was Adam Robinson, General Manager.

Mr. Carter's employment came an end with Westar Foods Inc., doing business as Hardee's, after he provided advance notice of his intention to leave employment and his resignation was accepted by the employer.

Based upon complaints and concerns by the employer regarding Mr. Carter's ability to use the company's computerized systems and because of charges of sexual harassment brought against him by former employees, Mr. Carter believed that his employment was in jeopardy. The claimant had asked his manager, Mr. Robinson, to tell the claimant if it appeared that his discharge was imminent. In response to the claimant's questioning, Mr. Robinson indicated that he did not know what the claimant's future was with the company. Whereupon Mr. Carter submitted his verbal resignation. Subsequently the parties agreed that the claimant would not be placed on the next schedule. In subsequent conversations with the company's district manager, Mr. Kelchen, the claimant did not indicate that his separation had been caused by the employer. Mr. Robinson did not have the authority to terminate an employee within the

company without the prior approval of the district manager, Mr. Kelchen. Mr. Kelchen had not approved any plans to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant left employment under disqualifying reasons.

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.

In this case the testimony is disputed. The administrative law judge having heard the testimony of the witnesses and having considered the evidence is of the opinion that the claimant chose to voluntarily relinquish his position with the captioned employer, doing business as Hardee's, in anticipation that he would be discharged in the future. Mr. Carter knew that the employer was dissatisfied with the claimant's computer skills and the claimant was aware that two or more previous female employees had brought sexual harassment charges against him. When the claimant's immediate supervisor, Mr. Robinson, could not guarantee the claimant's future employment, the claimant chose to provide notice of his intention to leave and subsequently specifically agreed that his final day of employment would be April 13, 2009 and that he would not be scheduled further. Although Mr. Carter had more than one telephone conversation with the district manager during this period of time, Mr. Carter did not indicate that his resignation had been forced or that he was being discharged by Mr. Robinson.

While leaving employment in anticipation of discharge may be a good-cause personal reason for leaving employment, it is not a good-cause reason attributable to the employer. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated July 14, 2010, reference 01, is affirmed. The claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, providing that he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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