

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL LEWIS
Claimant

APPEAL NO. 07A-UI-08909-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND INNS OF AMERICA LLC
Employer

**OC: 08-12-07 R: 04
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 14, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on October 3, 2007. The claimant participated in the hearing. Rebecca Van Dueren, General Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with 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 full-time maintenance man for Heartland Inn from June 26, 2006 to August 14, 2007. On August 6, 2007, General Manager Rebecca Van Dueren received a message that the claimant had called over the weekend and told the acting general manager that he was taking the week of August 6 through August 10, 2007, as vacation days. Ms. Van Dueren had just started on site that day but had been reachable during the previous six weeks as she was being trained. She called the claimant and left him a message August 6 and August 7, 2007, stating she was not aware he was taking vacation and asking him to call her as soon as possible about the whirlpool, but the claimant did not return her calls. She did not hear from him August 8 or August 9, 2007; and on August 10, 2007, Ms. Van Dueren called his mother because she was listed as his emergency contact. His mother explained he was in Colorado and may be having difficulty receiving messages. The claimant called the employer at 4:30 p.m. and left a message that he would be in on Tuesday or Wednesday and if Ms. Van Dueren had a problem with that, she could fire him. On August 13, 2007, the claimant called at 6:35 and left a message stating he would be in August 14, 2007. On August 14, 2007, the claimant reported for work at 7:00 a.m.; and after a few hours, the employer met with the claimant about his job status. While the corporate office had made a tentative decision to terminate his employment for taking vacation without prior approval, the claimant stated there was no excuse for his actions other than that he feared it would not be granted if he asked for

pre-approval. Even though the corporate office indicated the claimant's employment should be terminated the employer stated it would effectively "go to bat for him" if he wanted to stay. Peggy, general manager at another store/operations manager, asked Ms. Van Dueren if she had any qualms about trying to keep the claimant and she said no, and the claimant did not exhibit any reservations about Peggy calling corporate; but, while she was out of the room trying to call and have the corporate office decision reversed and instead issue a written warning, the claimant told Ms. Van Dueren he was bored and needed a change. He also said the employer should not fight for him to be able to stay, so Ms. Van Dueren and the claimant stopped Peggy from making the call to corporate. They asked the claimant to submit a resignation letter if he was leaving and the claimant said he wanted to be fired so he could collect unemployment insurance benefits; and, consequently, the employer complied with his wishes by detailing the events surrounding the vacation days in the status change report.

REASONING AND CONCLUSIONS OF LAW:

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

While the claimant maintains he was discharged, the employer argues that he voluntarily quit. The corporate office did want to terminate the claimant's employment because he did not receive prior approval for his vacation and told the employer when he returned that he did not do so because he feared his request would be denied. The new general manager, however, did not want to discharge him but instead wanted to give him another chance. The general manager and operations manager were both willing to fight to keep the claimant; but before the operations manager could make the call, the claimant said he was bored and needed a change and told them not to ask corporate to retain him. The employer was confident it would be able to keep him but that can not be known for sure, because the claimant prevented the phone call from occurring. Because of the circumstances, the employer reasonably asked the claimant to submit his resignation, but he declined because he wanted to be fired so he could collect unemployment insurance. Although the claimant denies that he voluntarily quit, the employer's testimony, based on notes made at the conclusion of the conversation, is credible and compelling evidence the claimant quit his job. The next issue is whether he voluntarily quit for good cause attributable to the employer. 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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. Under these circumstances, the administrative law judge cannot conclude that the claimant's leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, benefits are denied.

DECISION:

The September 14, 2007, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw