

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN F COOPER
Claimant

APPEAL NO. 10A-UI-08796-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AMERICAN BLUE RIBBON HOLDINGS LLC
VILLAGE INN & BAKERS SQUARE**
Employer

**OC: 05/16/10
Claimant: Respondent (2-R)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 9, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 5, 2010. Claimant Kevin Cooper provided a telephone number for the hearing, but was not available at that number at the time of the hearing and did not participate. Attorney Susan Schneider represented the employer and presented testimony through John Bloemer, General Manager. Exhibits One through Four were received into evidence.

ISSUE:

Whether the claimant's voluntary quit was for good caused attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kevin Cooper was employed by Village Inn & Baker's Square as a full-time cook from 2007 until May 5, 2010, when he voluntarily quit. Mr. Cooper's immediate supervisors were John Bloemer, General Manager, and Managers Don Xaviar and Ryan Ward. Mr. Cooper's brother also worked for the employer. Toward the end of April 2010, Mr. Cooper and his brother requested May 9, 2010 off so they could participate in a bowling tournament. May 9 was Mother's Day, a very busy day at the restaurant. Mr. Bloemer denied the request for that day off. Mr. Bloemer indicated that he was willing to look at the schedule to see if there was some way to rearrange it. At the beginning of May, Mr. Bloemer reaffirmed that the request for Mother's Day off was denied. Mr. Bloemer told Mr. Cooper and his brother that if they failed to appear for work on May 9, they would no longer be employed. Mr. Cooper called in sick on May 5, 2010 and indicated that he needed to go to the doctor. Mr. Cooper was then absent without notifying the employer on May 7, May 8, and May 9, 2010. Mr. Cooper did not make further contact with the employer or return to the employment.

REASONING AND CONCLUSIONS OF LAW:

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 general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Mr. Cooper failed to participate in the hearing and thereby failed to present any evidence to support the notion that his quit was for good cause attributable to the employer. The weight of the evidence indicates that Mr. Cooper voluntarily quit for personal reasons by failing to appear for work or make contact with the employer after he called in the absence on May 5, 2010. The weight of the evidence fails to establish any intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment.

Mr. Cooper voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Cooper is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Cooper.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's June 9, 2010, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs