

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

GARY N PRICE
3212 – 335TH ST
CRESCO IA 52136

JMS COMPANY LLC
LIME SPRINGS TRAVEL PLAZA
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PO BOX 97
LIME SPRINGS IA 52155-0097

Appeal Number: 05A-UI-06143-JTT
OC: 05/15/05 R: 04
Claimant: Appellant (1R)

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 Quit

STATEMENT OF THE CASE:

Gary Price filed a timely appeal from the June 6, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 28, 2005. Mr. Price participated. JMS Corporate Member Dale Swade represented the employer.

FINDINGS OF FACT:

Gary Price was employed by JMS Company as a full-time convenience store assistant manager from September 1, 2001 until April 26, 2005, when Kum & Go took over operation of the convenience store. Mr. Price then worked for Kum & Go until May 17, 2005, one day after he submitted his resignation to Manager Gwen Adams and provided two-weeks' notice of his quit date. Ms. Adams conveyed Mr. Price's resignation to a district manager, who telephoned

Mr. Price the next day, accepted the resignation, and terminated the employment, rather than wait for the end of the two-week noticed period.

Mr. Price's decision to quit the employment was prompted by Mr. Price's dissatisfaction with a change in management on April 26, 2005, when Kum & Go began to operate the store. Mr. Price believed the new management created work rules specific to him. Approximately one week prior to submitting his resignation, Mr. Price was assigned to rearrange the stock inside the cooler. The next day, a different manager instructed Mr. Price that the stock in the cooler was not arranged appropriately and that Mr. Price would need to arrange the stock differently. Mr. Price advised the second manager that he had performed the task as instructed by the first manager. The second manager advised the cooler would need to be rearranged nonetheless. Another employee subsequently rearranged the stock in the cooler.

Mr. Price was in the habit of wearing a cap when he worked behind the counter. When Kum & Go took over store operations, Mr. Price purchased a brown cap and khaki colored cap to wear during work, since these were Kum & Go's colors. Soon thereafter, a manager pulled Mr. Price aside and instructed him that he needed to wear a Piccadilly pizza cap instead of the caps he had purchased. Piccadilly pizza is a product sold by Kum & Go.

Mr. Price had additional concerns about his employment once Kum & Go took over the store. Two managers were assigned to the store specifically for the purpose of training the JMS employees in Kum & Go procedures. Mr. Price felt that he was not in fact receiving training, especially with regard to completing necessary paperwork.

Mr. Price submitted his resignation shortly after another employee had done the same. The Kum & Go management apparently met with the other employee, inquired what management could do to get the employee to stay, and persuaded the employee to stay. Mr. Price expected the same response to his resignation and was disappointed when the employer took the further step of terminating his employment prior to the expiration of the two-week notice period.

Kum & Go took over operations of the convenience store pursuant to a contract with JMS. JMS continues to own the real property and the fixtures, while Kum & Go owns the inventory and employs the staff. Pursuant to the agreement, Kum & Go agreed to retain all staff. JMS is not directly involved in store operations, but received a percentage of revenue and/or profits.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Price's voluntary quit was for good cause attributable to the employer. It does not.

A person who voluntarily quits employment is disqualified for unemployment insurance benefits unless the evidence establishes that the quit was for good cause attributable to the employer. See Iowa Code Section 96.5(1). When a person quits employment due to intolerable or detrimental working conditions, the quit is deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). However, when a person quits due to dissatisfaction with the work environment or due to a personality conflict with a supervisor, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21) and (22).

The evidence in the record fails to establish that the quit was prompted by intolerable or detrimental working conditions. Mr. Price in essence embarked upon new employment when Kum & Go took over operations. Mr. Price seems to have understood this, but also seems to

have been less than thrilled with the new management. The incidents and concerns that prompted Mr. Price to submit his resignation did not amount to intolerable or detrimental working conditions. Mr. Price seems to have known this at the time he submitted his resignation and appears to have intended merely to see where he stood and whether he continued to be a valued employee. Mr. Price was surprised by the response he received to his resignation. The quit was motivated by dissatisfaction with the new work environment and apparent personality conflict with a manager who was only at the store on a temporary basis. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Price's voluntary quit was not for good cause attributable to the employer.

Because Mr. Price gave Kum & Go advance notice of his resignation and Kum & Go responded by discharging him prior the proposed date of the resignation, Mr. Price is eligible for benefits the two-week notice period, provided he is otherwise eligible, but is disqualified for benefits beyond the two-week notice period. See 871 IAC 24.25(38). Accordingly, Mr. Price is eligible for benefits for the period of May 17-30, provided he is otherwise eligible. Effective, May 31, Mr. Price 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.

DECISION:

The Agency representative's decision dated June 6, 2005, reference 01, is affirmed. The claimant is eligible for benefits for the period of May 17-30, provided he is otherwise eligible. Effective, May 31, 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 matter is remanded to the Tax Department for a determination of which employer, JMS Company L.L.C. or Kum & Go, should have been referenced as the employer in this matter.

jt/kjw