IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DAVID L NEGLEY
Claimant

NPC INTERNATIONAL INC
PIZZA HUT
Employer

APPEAL NO. 07A-UI-01982-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/21/07 R: 03
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

David L. Negley (claimant) appealed a representative's February 15, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from NPC International, Inc. / Pizza Hut (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 12, 2007. The claimant participated in the hearing and presented testimony from one other witness, Deanne Negley. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

After a prior period of employment with the employer's franchiser corporation, the claimant started working for the employer itself on April 14, 2000. Beginning May 3, 2006, after accepting a transfer from the employer's Osceola, Iowa restaurant to the employer's Creston, Iowa restaurant, he was promoted to and worked full time as the restaurant general manager. His last day of work was December 15, 2006.

Upon being transferred and promoted, the claimant understood that for at least approximately the first three months he would be working a great number of hours; this was premised upon the assumption that it would take him that long to hire and train new employees into the restaurant. However, while the claimant was working an average of 68 hours per week, he was not hiring and training new employees. As a result, he continued working the high volume of hours even after the anticipated three-month period ended.

The claimant continued to commute to and from his home in Osceola. As a result, on some occasions he did not even go home but slept in the restaurant office. At least in part due to the stress of the hours he was working, the claimant began smoking, began abusing substances, and engaged in an affair with an employee from the Osceola restaurant. The employer had at least some awareness of the affair, which was prohibited by the employer's policies, but did not take disciplinary action against the claimant. On or about November 3, the situation culminated in the claimant suffering some level of emotional break down. On that date the claimant made a phone call to his area manager and sought to tender his resignation. The area manager persuaded the claimant to wait but to seek counseling.

On November 7 the claimant saw a counselor for depression, who verbally advised him that he should work no more than 45 hours per week. The counselor did not make a recommendation that the claimant quit his employment. The same day the claimant spoke again with his area manager and conveyed this information to him. The area manager responded by asking the claimant what he, the claimant, was going to do to accomplish this. The claimant answered by indicating that he would need to get persons from the Osceola restaurant to come to the Creston store to cover some of the shifts; the area manager agreed to this solution.

For the first week it did work to have shifts covered by persons from the Osceola restaurant, and the claimant did keep under the 45 hours. However, on the weekend of November 17, the person who was going to cover the shifts had some personal business arise. The claimant felt he would not be able to get anyone else from the Osceola store to help cover the shifts, and so covered all of the weekend hours himself with assistance from his wife, who the area manager had approved becoming an official employee when she contacted him on November 18 to inform him of the weekend problem; he was in the process of leaving on vacation and so indicated he would not be able to do anything until his return, which was on or about November 28. After the weekend, on November 20 the claimant again attempted to contact the area manager to seek to quit, but since the area manager was on vacation he could only leave a voice mail, which he did, indicating that he was in fact quitting. Since it was not clear whether the area manager had received that message, on December 1 the claimant sent an email to the area manager confirming that he was quitting because, under the circumstances, he was not being successful in either rebuilding the Creston restaurant business or his personal life, and that December 15 would be his last day of work.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:
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> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered

> to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). While the claimant's work situation was perhaps not ideal, he has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment inherently detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973).

The biggest question here is whether the problems which compelled the claimant to resign were "attributable to the employer." The claimant asserts that they are. For example, the claimant argues that even in the absence of a request from the claimant for assistance or additional training that the employer knew or should have known at the point he was promoted or within a short time thereafter that he lacked the skills or training himself in order to be able to hire and train new employees, which would have taken a substantial portion of the work volume burden from him. In essence, the claimant argues that the employer should have intervened at that time by stepping in and either finding someone else or another means of hiring and training new employees for the restaurant or by arranging for coverage for the restaurant so that the claimant could receive additional training in hiring and training of new employees. Particularly in the absence of some earlier notification or request for assistance from the claimant, the administrative law judge cannot conclude under these facts that the employer had any affirmative duty to the claimant to recognize and address his problems in hiring and training new employees.

The first the employer had any specific reason to know that the claimant was unable to operate under the restaurant staffing status quo was November 3, 2007. While the employer might have been able surmise from labor hour records prior to November 3 that the claimant was working a great number of hours since there were so few regular employees' hours reported, what is a problem for one person in terms of the number of hours worked might not be a problem for another person. The claimant asserts that the fact that the employer knew that he was having an affair with another employee was a further signal to the employer that the claimant was not able to handle the restaurant situation, which he argues should have again triggered intervention on the employer's part. Again, the administrative law judge cannot conclude under these facts that the employer's knowledge of the affair either separately or coupled with the available information as to the restaurant's labor hours created an affirmative duty to the claimant to recognize and address his problems in having enough employees so that he would have sufficient personal and family time so as to not jeopardize his personal and family well-being.

When the claimant did report his situation to the area manager on November 3 he was encouraged to seek counseling, and when the claimant reported the results of the counseling to the area manager on November 7, the area manager was at least receptive to the statement that the claimant should work no more than 45 hours per week. The claimant argues that here again the employer had a duty to step in and take control of the situation so as to ensure that the recommendation was carried out, rather than leaving it to the claimant to propose how this could be accomplished. Again, the claimant did not protest to the area manager that he could not or did not know how he could carry out the recommendation; rather, he made a seemingly reasonable suggestion to which the area manager agreed that employees from the Osceola restaurant be brought over to cover. This solution apparently worked for one week, but then fell apart the following weekend when the one employee was unable to cover, the claimant felt there was no one else at the Osceola restaurant he could ask, and the area manager was not available. The claimant then made his final decision that there was nothing that could be worked out with his employment that would allow him to achieve the balance he desired and yet maintain his employment, and therefore submitted and confirmed that he was quitting. While it was unfortunate timing with the area manager being unavailable on vacation beginning November 18, even assuming that after November 7 the employer had some duty to assist the claimant in staying within the 45 hour time limit, the employer had virtually no time before the claimant solidified his decision to quit to try some other approach after it became apparent on or about November 18 that the suggestion implemented after the November 7 discussion was not working.

To at least a significant extent, the claimant's reason for quitting was for mental health reasons.

871 IAC 24.26(6)b 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:
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> (6) Separation because of illness, injury, or pregnancy.
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> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
>
> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The claimant has not presented competent evidence showing adequate health reasons to justify his quitting. His counselor did not recommend quitting; the accommodation the claimant had suggested had been agreed to by the employer, and it had been working. The employer did not

have a reasonable opportunity to fix the remedy when the remedy failed, and before quitting the claimant did not seek further correction or accommodation. Accordingly, while the claimant had good personal reasons for quitting, the quit has not been established as being for good cause attributable to the employer and benefits must be denied.

DECISION:

The representative's February 15, 2007 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of December 15, 2007, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/kjw