**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**LEONARD A DAVIS**
Claimant

**WINNEBAGO TRIBE OF NEBRASKA**
**WINNAVEGAS**
Employer

**APPEAL NO. 14A-UI-11513-NT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 10/12/14**
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated November 3, 2014, reference 01, which denied unemployment insurance benefits finding that he voluntarily quit work on October 2, 2014 after being reprimanded by his employer. After due notice was provided, a telephone hearing was scheduled to be held at 10:00 a.m. on Wednesday, November 26, 2014. Although duly notified, the claimant did not submit a telephone number for the hearing. At 10:20 a.m. on November 26, the employer's witness was released and a default decision was prepared for entry. Mr. Davis then read the Notice of Hearing and called in providing a telephone number where he could be reached. The employer agreed and the hearing record was re-opened at which time Mr. Davis participated and the employer participated by Ms. Cindy Coleman, Human Resource Generalist.

**ISSUE:**

The issue is whether Mr. Davis left his employment with good cause that was attributable to the employer.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Leonard Davis was employed by Winnebago Tribe of Nebraska at its Winnavegas casino from August 19, 2008 until October 2, 2014 when Mr. Davis left work because he disagreed with a reprimand and three-day suspension that was being given to him. Mr. Davis was employed as a full-time concession cook and was paid by the hour. The claimant worked under the direction of rotating immediate supervisors and under the direction of the food and beverage manager, Ms. Lonetree.

Mr. Davis elected to leave his employment with the captioned employer on October 2, 2014 because he did not agree with the reprimand and three-day suspension that was being given to him because the employer considered him to have been insubordinate because the claimant had not informed or obtained permission from the food and beverage manager or his immediate

supervisors before turning off an ice machine that was located in the concession area and used to serve patrons.

The employer had initially written up Mr. Davis for the infraction on September 22, 2014 but Mr. Davis had disputed the basis for the write-up and requested that the statements of maintenance workers who were involved in the initial incident be considered in determining whether disciplinary action should be issued. Mr. Davis believed that he should not receive a disciplinary action because of the incident as he had been told by two maintenance department workers to shut the ice machine off at times to prevent over freezing and the clumping of ice. Mr. Davis requested the maintenance workers to provide statements to the Human Resource Department about the matter and they did so. It appears that Mr. Davis considered the matter to be closed and worked two of the three days he previously was to have been suspended from work.

Ms. Coleman, a Human Resource department employee, noted that Mr. Davis was at work on one of the days that he had previously been suspended for and made an inquiry. Mr. Davis was called to the company Human Resource offices on October 2, 2014 and informed that although the maintenance workers had made statements about the initial incident, the employer had concluded that claimant's previous actions were still considered to be insubordinate and that the warning and the three-day suspension would remain in place.

Mr. Davis did not understand that the employer's issue was his failure to notify his supervisors and/or the beverage department manager of the request to turn off the ice machine and to obtain management consent before disabling the machine, even temporarily. Mr. Davis believed that because maintenance workers had suggested that he shut off the ice machine, he had been vindicated for doing so and that any warning about the matter was unjustified. When informed that the warning and suspension would not be rescinded, Mr. Davis became very upset, threw his badge on the desk and stated that he was quitting employment.

The claimant had previously indicated on the initial warning form his disagreement with the warning and the reasons for it and was angry his employer had not seen fit to agree with his point of view.

Company employees are informed at the time of orientation and informed in the company handbook of their right to go up the chain of command even as far as going to the facility's general manager if they believed that they are not being treated fairly in any employment-related matter. Claimant was also aware that he could file a "fair treatment complaint" about any warnings or disciplinary actions and the matter would be reviewed by a management individual, a line worker and a supervisor from different departments to review the disciplinary action and determine whether it would remain in effect. Mr. Davis did not go up the chain of command or file a fair treatment complaint before quitting his job.

It is the claimant's position that information from other individuals led him to conclude that going up the chain of command or filing a fair treatment complaint would be to no avail. Mr. Davis maintains that he had numerous reasons for quitting his job on October 2, 2014 and may have done so, even if he had not been issued a disciplinary action that day.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes good cause attributable to the employer for Mr. Davis leaving his employment with Winnebago Tribe of Nebraska on October 2, 2014. It does not.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(28) provides:

> Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (28) The claimant left after being reprimanded.

In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with an 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). Leaving because of a disagreement with a reprimand is not good cause. 871 IAC 24.25(28). While the claimant may have disagreed with the basis for a reprimand being given to him by the company on September 22, 2014, other reasonable actions were available to the claimant other than quitting his job over the matter. The claimant initially exercised one option by disagreeing with the initial warning and stating the reasons for his disagreement on the form itself. Mr. Davis was also aware that he had a right to go up the company's chain of command to have the matter reviewed by high levels of management up to and including the facility's general manager, if he disagreed with the disciplinary action that had been given to him. Mr. Davis was also aware that he had a right to file a "fair treatment complaint" if he disagreed with the warning and have the matter reviewed by a cross section of management, supervisors and hourly workers from other departments and if the warning was determined to be unjustified, it would be removed. Mr. Davis chose not to avail himself of either of these two reasonable alternatives to quitting his employment.

The intent of the warning that was being given to Mr. Davis was reasonable. The employer was attempting to impart to Mr. Davis the employer's expectation and requirement that he must inform and get the approval of someone with supervisory authority in his department before shutting off or disabling necessary equipment, and that failure to do so was insubordinate conduct by his employer. The claimant was not required to agree with the warning but merely to acknowledge it and to conduct himself appropriately in the future. Because he disagreed with the warning, Mr. Davis elected to quit and did so. The administrative law judge finds the claimant's testimony that he may have quit that day for numerous other reasons to strain credibility. The focal point of the claimant's work dissatisfaction on October 2, 2014 was because the employer had elected to warn and suspend him for three days and Mr. Davis did not agree with the reprimand. If an employer expects an employee to conform to certain

expectations or face discharge in the future, appropriate and preferably written, detailed and reasonable notice should be given. The claimant's disagreement with the employer's decision to warn him is not a good cause reason for leaving his employment. Other reasonable alternatives were available to the claimant.

Because the claimant left employment without good cause attributable to the employer, unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's decision dated November 3, 2014, reference 01, is affirmed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs