

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSSELL H CUMMINGS
Claimant

APPEAL NO. 09A-UI-02598-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUMMINGS HOME BUILDERS
Employer

**Original Claim: 01/11/09
Claimant: Appellant (2)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Russell Cummings (claimant) appealed a representative's February 13, 2009 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Cummings Home Builders (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 13, 2009. The claimant participated personally. The employer participated by Norwin Cummings, President, and Marlene Cummings, Secretary.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on or about January 5, 2000, as a full-time supervisor. The claimant is the employer's son and lives in property owned by the employer. The employer regularly gives the claimant advances on his paychecks. The employer pays the claimant every other Friday.

The claimant was supposed to be paid on January 9, 2009. He went to the employer's house and asked for his paycheck. The employer said it was holding checks to make certain there was enough money. Then the employer made fun of the claimant by making crying noises. The claimant quit and left the house. He returned to his residence and the employer followed him. The two argued. On January 11, 2009, the claimant's mother, the secretary, brought the claimant \$85.00 of the \$187.00 the employer said it owed the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit with 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer that he was leaving and quit work. In the absence of agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving the employment. Deshler Broom Factory v. Kinney, 140 Nebraska 889, 2 N.W.2d 332 (1942).

When an employee quits work because the employer did not pay wages when they were due without an agreement to the contrary, his leaving is with good cause attributable to the employer. The claimant left work because he was not paid his wages when they were due and there was no agreement to the contrary. His leaving was with good cause attributable to the employer. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's February 13, 2009 decision (reference 02) is reversed. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw