

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHAD R HANSEN

Claimant

APPEAL 14A-UI-11450-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALB LLC ARBY'S RESTAURANT

Employer

OC: 09/28/14

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 31, 2014 (reference 02) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on November 25, 2014. Claimant participated. Employer participated through owner Jennifer Brietfelder.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a crew member from June 26, 2013 and was separated from employment on October 8, 2014 when he quit. Jennifer Brietfelder is not involved in day-to-day operations of the business. Employees are encouraged to take concerns to the general manager or the lead manager first and then call Mike Brietfelder at his number, available in the managers' office. Three weeks prior to the separation claimant gave co-owner Mike Brietfelder and general manager Beth a letter indicating that he wished to work on the fryer from 11:00 a.m. through 1:00 p.m. and empty garbage from the lobby because he could not physically handle working at the register or drive-through window. He had told the employer about having been diagnosed with Post-Traumatic Stress Disorder (PTSD) but did not mention arthritis in both legs. He did not provide medical documentation about either condition or requirements for accommodation. He has difficulty with crowds or working with the public. They agreed they would do the best they could to transition him to those jobs. Working fryers and the lobby is physical work and duties in the lobby require interacting with customers. He reported for work on October 3, looked at the deployment (work duty assignment) guide for the day, saw that manager Nicole had crossed him off the fryer and put him on the drive-through window, and left without speaking with anyone. He was a no-call/no-show on October 6, 7, and 8, 2014. Claimant did not present medical evidence he was advised to quit his job. Claimant spoke to shift leader Allan after the separation about why he left but did not seek Mike's number or speak to him when he went in to pick up his final paycheck on October 8. The employer was working to transition him to fryers since he worked at the busiest time of day. Continued work was available. He has filed a claim for Social Security Disability Insurance disability benefits, which is pending.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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(4), (6), (21), (22), (27) 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 § 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 § 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

(6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

(27) The claimant left rather than perform the assigned work as instructed.

Beyond leaving without notice, the claimant's decision to quit because he did not want to perform assigned work duties, did not agree with the supervisor about various issues, had a personality conflict with a supervisor, and did not like the work environment, was not for a good cause reason attributable to the employer.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Subsection d of Iowa Code § 96.5(1) provides an exception where:

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.

The statute specifically requires that the separation be upon the advice of a medical professional but claimant did not present evidence that she provided any such documentation to the employer to support either his request for accommodation or his desire to leave the employment.

DECISION:

The October 31, 2014 (reference 02) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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