

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRAD J PETERSON
Claimant

APPEAL NO. 10A-UI-00046-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'REILLY AUTOMOTIVE INC
Employer

OC: 11/08/09
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, O'Reilly Automotive, filed an appeal from a decision dated December 23, 2009, reference 03. The decision allowed benefits to the claimant, Brad Peterson. After due notice was issued, a hearing was held by telephone conference call on February 10, 2010. The claimant did not participate but offered testimony from Marge Peterson on his behalf. The employer participated by Store Manager George Murphy.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Brad Peterson was employed by O'Reilly Automotive from February 5, 2009 until August 29, 2009 as a full-time part specialist. On August 29, 2009, Store Manager George Murphy, issued the claimant a written warning. He had been attempting to diagnose customers' car problems using a "code reader" rather than an actual scanning tool. This had caused him to sell customers the wrong parts, or parts which did not solve the problem. This was only a first written warning and his job was not in jeopardy.

After being issued the warning the claimant returned to the back room and stayed about 30 minutes then left the store for about 15 minutes. When he returned he stayed briefly then announced to a co-worker he was quitting and walked out.

At the hearing it was asserted there was a hostile work environment after he was questioned about a missing part by the district manager. He also felt he might be fired for theft because another employee had been arrested and removed from the store by police after an internal investigation for theft. He never notified the corporate office he felt the workplace was hostile to him.

Brad Peterson has received unemployment benefits since filing a claim with an effective date of November 8, 2009.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(28) and (33) provide:

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.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The claimant quit after being reprimanded. This was a written warning and his job was not in jeopardy. Continuing work was available to him had he not quit. He has asserted a "hostile" work environment because two months prior he had been questioned by the district manager about a missing part.

If, in fact, he felt the workplace was hostile he did not take advantage of the employer's internal reporting system to notify human resources of his complaint. In order for good cause attributable to the employer to exist, a claimant with grievances must make some effort to give the employer an opportunity to work out whatever problem led to the grievance. By not giving notice to the employer of the circumstances causing the decision to quit employment, the claimant failed to give the employer an opportunity to make adjustments which would alleviate the need to quit. *Denby v. Board of Review*, 567 P.2d 626 (Utah 1977).

Mr. Peterson also feared he was going to be fired because another employee had been "walked out of the store" by police. This other employee had been the subject of an extended investigation for theft for several weeks, not just for one incident of a missing part. The claimant quit because he did not want to be fired. He was not in danger of being fired, except for the one warning his job performance was satisfactory.

The claimant quit because of the reprimand and because he felt his job performance was not to the employer's satisfaction. Under the provisions of the above Administrative Code sections, this is misconduct for which the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of December 23, 2009, reference 03, is reversed. Brad Peterson is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css