

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FREDRICK P LOMBARD
Claimant

APPEAL NO. 09A-UI-08227-NT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

HARVEST MANAGEMENT SUB LLC
Employer

**OC: 01/04/09
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 1, 2009, reference 03, that denied benefits based upon the separation from Holiday Retirement. After due notice, a telephone conference hearing was scheduled for and held on June 24, 2009. Mr. Lombard initially provided an incorrect telephone number for the hearing. The file was reviewed and a Decision on the Record was issued, subsequently, one half hour later. The claimant provided a correct telephone number and the telephone hearing was held. The claimant participated personally. Although duly notified, the employer did not respond to the hearing notice and did not participate. An amended decision was issued.

ISSUE:

The issue in this matter is whether the claimant left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having reviewed the evidence in the record, finds: The claimant was employed as a full-time assistant cook for the captioned employer from January 28, 2009 until April 18, 2009 when he left employment.

The claimant left employment when his immediate supervisor "Crystal" continued to play loud vulgar music on her CD in the kitchen area. When Mr. Lombard complained, his immediate supervisor "belittled him" and his abilities. The claimant was upset due to the vulgarity of the music and CDs repeatedly being played by his immediate supervisor. When the claimant's immediate supervisor was not responsive to his complaints, Mr. Lombard attempted to go up the chain of command. Although he spoke to the facility manager, the claimant's immediate supervisor continued to play vulgar and embarrassing music in the presence of the claimant and other workers.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes good cause attributable to the employer for the claimant leaving the employment. It does.

871 IAC 24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

The evidence in the record establishes the claimant left employment due to intolerable working conditions. The record establishes that the claimant followed a reasonable course of action by complaining to his supervisor and to upper management about the supervisor playing vulgar and embarrassing music in the presence of the claimant and other workers. When the conditions continued after the claimant's complaints, Mr. Lombard left the employment. Benefits are allowed.

DECISION:

The representative's decision dated June 1, 2009, reference 03, is reversed. The claimant voluntarily left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

srs/css/pjs