

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JESSE H SMITH
375 – 20TH ST SE
CEDAR RAPIDS IA 52403**

**APAC CUSTOMER SERVICE
C/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-04678-CT
OC: 03/28/04 R: 03
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jesse Smith filed an appeal from a representative's decision dated April 14, 2004, reference 01, which denied benefits based on his February 20, 2004 separation from APAC Customer Services of Iowa (APAC). Due notice was issued scheduling the matter for a telephone hearing to be held on May 18, 2004. Neither party responded to the notice of hearing.

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: Mr. Smith was employed by APAC from July 31, 2001 until February 20, 2004 as a full-time telemarketer.

He was 45 minutes late reporting for work on February 9, 2004. His supervisor, Berni Blazek, notified him that he was being demoted to a lesser position for 30 days as a result of his tardiness. According to the employer's policy, an individual may be late four times before disciplinary action is imposed. Mr. Smith was entitled to 1.5 additional occurrences of tardiness before he was subject to disciplinary action. He notified the supervisor that he would quit if demoted. The supervisor then reduced the demotion to 15 days. As a result, Mr. Smith tendered his two week's notice on February 9 and worked until February 20.

Mr. Smith had had problems with Ms. Blazek on prior occasions and brought them to the attention of management. After he submitted his resignation, an attempt was made to transfer him to a different supervisor. However, after approximately two hours with a different supervisor, Mr. Smith was notified that he would again be under the supervisor of Ms. Blazek. Therefore, he continued with his plans to quit.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Smith was separated from employment for any disqualifying reason. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code Section 96.5(1). Mr. Smith had the burden of proving that his quit was for good cause attributable to APAC. Iowa Code Section 96.6(2). The employer did not participate in either the fact-finding interview or a hearing to refute the assertions made by Mr. Smith. He left the employment after being disciplined for being late on February 9. An individual who leaves employment after being reprimanded is presumed to have quit for no good cause attributable to the employer. See 871 IAC 24.25(28). However, it is only a presumption. The administrative law judge concludes that Mr. Smith has successfully rebutted the presumption that his quit was without good cause attributable to the employer.

An employee has the right to expect that the employer will abide by its own policies as communicated to the employees. Mr. Smith's demotion of February 9 was contrary to the employer's policies. The administrative law judge presumes that the demotion would have entailed a corresponding reduction in wages. The unwarranted demotion may have caused Mr. Smith to lose face with his peers. Moreover, the demotion could have formed the basis of further disciplinary action in the future. Mr. Smith was entitled to the full benefit of the employer's disciplinary policies. The administrative law judge cannot disregard the fact that Mr. Smith had had prior problems with Ms. Blazek and had spoken to management about her. Her unwarranted demotion of February 9 may well have been retaliatory.

For the reasons cited herein, the administrative law judge concludes that Mr. Smith has satisfied his burden of proving that his quit was for good cause attributable to APAC. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated April 14, 2004, reference 01, is hereby reversed. Mr. Smith voluntarily quit his employment for good cause attributable to the employer. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf