

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFF L JESSEN
Claimant

APPEAL NO. 13A-UI-08044-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

B R STORES INC
SUPER SAVER/ALPS
Employer

OC: 06/16/13
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated July 2, 2013, reference 01, which held the claimant eligible to receive unemployment insurance benefits finding that the claimant was forced to resign. After due notice was provided, a telephone hearing was held on August 14, 2013. The claimant participated. The employer participated by Ms. Donna Bristol, Hearing Representative and witness, Mr. Steve Petersen, Store Director Council Bluffs.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: Jeff L. Jessen was employed by the captioned employer, doing business as Super Saver Stores in Council Bluffs, Iowa, from July 30, 2010 until May 11, 2013 when he left work and did not return. Mr. Jessen was most recently employed as a full-time dairy department manager and was paid by the hour. His immediate supervisor was the store director, Mr. Petersen.

Mr. Jessen had left work on May 7, 2013 early indicating that he was ill. The claimant then called in two days and was scheduled not to work one day. On Saturday, May 11, Mr. Jessen was observed by the store manager wearing a respirator mask as he performed his duties on the sales floor. When the store director asked why, Mr. Jessen responded that the store manager should stay away as he was contagious with foot and mouth disease.

Because of concern about the claimant's dress and his statements, the store director spoke to Donna Roosevelt about the claimant's statements and the employer reasonably concluded that because the claimant had said that he had foot and mouth disease he should obtain a note from his doctor before returning to work verifying that he was not contagious. Mr. Jessen was called to company offices and the store director explained that if necessary Mr. Jessen could use

FMLA paperwork that was being provided to him to protect his job if he were unable to work due to illness and that in the alternative Mr. Jessen should provide a doctor's note verifying that he was okay to work based upon the statements that he had made that day.

Mr. Jessen took the FMLA paperwork and left the premises and did not return or further contact the employer in any manner until June 12, 2013.

On June 12, 2013, Mr. Jessen encountered Mr. Petersen, the store director in the Council Bluffs store, and at that time stated that he had chosen to leave his employment with Super Saver but had not known how to tell the store director about his decision. Mr. Jessen further stated at that time that he had left to take better employment with the University of Nebraska at Omaha. The store manager concluded at that time that the mystery about why Mr. Jessen had not returned to work or provided a doctor's release or FMLA paperwork had been resolved.

It is Mr. Jessen's position that because he was provided with FMLA paperwork that could be potentially used to safeguard his employment up to twelve weeks of absence due to illness, that the providing of the paperwork had "forced him to resign." It is the claimant's understanding that he was unsure as to why he had been provided the FMLA paperwork and that a number of people that he had made informal inquiries about FMLA issues had been unable to provide satisfactory information to him. The claimant did not contact the store director or any management of his employer if he had questions about the FMLA paperwork or its intent.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes that the claimant was forced to resign. It does not. The second question then is whether the claimant left his employment with good cause that was attributable to the employer. He did not.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. See Iowa Code section 96.6-2. An individual who voluntarily leaves their employment must first give notice to the employer of the reason for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993).

In this matter the claimant's own conduct in wearing a respirator mask to work and stating that he was contagious with foot and mouth disease led the employer to reasonably require that the claimant provide a doctor's statement that he was healthy and able to work in public at their facility working with food products. In addition to making that reasonable and work-related request, the employer also provided FMLA paperwork to Mr. Jessen so that if necessary, the paperwork could be completed and the claimant's job with the company would not be jeopardized for up to twelve weeks with any absence from work that was medically necessary.

Mr. Jessen did not follow a reasonable course of action by contacting or questioning the store director or any other management individuals in the company if he was confused about the

directives or their meaning. The claimant instead had no further contact with the employer for over one month. The claimant did not report for scheduled shifts nor notify the employer of his impending absences. The claimant did not provide a doctor's note that he was healthy and the claimant did not have any FMLA paperwork completed which would hold his job available for him under Federal law. The next conversation with any management individual associated with the employer took place over one month later when the claimant had verified that his intention had been to quit employment to take another job.

The administrative law judge concludes based upon the evidence in the record that the evidence clearly establishes that the claimant was not forced to resign but that the claimant quit work by failing to report for scheduled work for three or more consecutive workdays after May 11, 2013 but without providing any notice to the employer. In fact, the claimant did not provide any notice to the employer for over 30 days and when he did so he stated that his intention had been to quit. The administrative law judge finds the claimant's testimony that he did not understand the reason for the employer requiring a doctor's note or the reason that the claimant was supplied FMLA paperwork strains credibility. The administrative law judge finds that the claimant's intention was in fact to quit employment and that the claimant did so without good cause that was attributable to the employer.

For the reasons stated herein the administrative law judge concludes that the claimant left employment without good cause attributable to the employer under disqualifying conditions.

Because the claimant has been deemed ineligible for benefits any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The representative's decision dated July 2, 2013, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The matter of the claimant's overpayment is remanded to the Claims Section for investigation and determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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