

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHASE E KELLAR
Claimant

APPEAL NO. 10A-UI-05163-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

2ND GENERATION INC
Employer

OC: 02/28/10
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated March 26, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits based upon his separation from Country Fried Chicken of Ottumwa, Iowa. After due notice, a telephone conference hearing was held on May 18, 2010. The claimant participated personally. The employer participated by Mr. Randy Gottschalk, Company Owner, Ms. Chrissy Van Dyke, Manager and Dale Clarke, Assistant Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Mr. Chase Kellar was employed by KFC of Ottumwa, Iowa from November 21, 2008 until May 15, 2009 when he voluntarily quit employment without notice. Mr. Kellar last worked as a full-time assistant manager and was paid by the hour. His immediate supervisor was Chrissy Van Dyke.

Mr. Kellar left his employment after completing his duties on May 15, 2009 as he felt that he had been "treated poorly" by the company owner during a telephone conversation. Mr. Kellar had reported that one of the facility's computerized cash register machines was not operating properly and that was affecting the claimant's ability to complete the evening's shift reports. Mr. Kellar believed that Mr. Gottschalk was angry because of the report and the claimant's inability to complete the shift report. When Mr. Gottschalk made a reference to either the claimant or a situation being "stupid" the claimant believed that he was not being treated properly. The claimant finished his duties that night. Mr. Kellar was scheduled for vacation the following day and did not report to work thereafter. Prior to leaving employment the claimant did not speak to the company owner any further or bring his dissatisfaction to the attention of the store manager, Ms. Van Dyke. Mr. Kellar and the company owner had worked harmoniously in

the past and Mr. Kellar had gone to both the store manager and to the owner to resolve issues prior to May 15, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant voluntarily left employment without good cause attributable to the employer.

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.

An individual who voluntarily leaves his employment must first give notice to the employer of the reasons 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). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991). Claimants are not required to give notice of intention to quit due to intolerable or detrimental or unsafe working conditions if the employer had or should have had reasonable knowledge of those conditions.

It is the claimant's position that he quit employment due to a detrimental or intolerable working condition. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer under the provisions of section 871 IAC 24.26(4). The tests as to whether an individual has good cause attributable to the employer for leaving employment is not a subject test as to whether the employee themselves feel that they have good cause but an objective test as whether a reasonable person would have quit under similar circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 33 (Iowa 1988). See also O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

The administrative law judge concludes based upon the evidence in the record that the claimant left the employment based upon an isolated instance when he felt that his employer was upset because of a machine malfunction. Although other machines were available to the claimant on the night in question and the evidence in the record does not establish that the company owner's conduct was so reprehensible or repetitive so as to establish an intolerable or detrimental working condition.

Inasmuch as the claimant did not give the employer an opportunity to resolve his complaints prior to leaving employment, the separation was without good cause attributable to the employer. Benefits are denied. The claimant has received unemployment benefits to which he is not entitled. The question of whether claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision dated March 26, 2010, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, providing

that he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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