

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE BRIGGMAN
Claimant

APPEAL NO. 11A-UI-02160-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRICK CITY BAR & GRILL LLC
Employer

OC: 12-05-10
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 17, 2011, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on June 13, 2011. The claimant participated in the hearing. Jeffrey Alber, owner, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time cook for Brick City Bar & Grill from April 1, 2010 to December 8, 2010. The employer went to the restaurant December 8, 2010, to discuss the consistency of the food with the claimant. They had a 45 minute discussion during which they talked about not marking the food for rotation and a lack of consistency with the rolls and mashed potatoes. The employer expected the food to be consistent every day, but the claimant made excuses about the problems. The employer indicated he would be at the restaurant during the next four months so they could work on the issues with the business together. He stated they were going to have to find answers to the problems and correct them and had brought cooks from some of the other restaurants to help the claimant when that restaurant opened in April 2010. The parties did not raise their voices during the conversation and the employer had not prepared a written or documented verbal warning for the claimant. The employer never told the claimant his job was in jeopardy but did mention he was responsible for the consistency of the food. The employer believed it was a routine business discussion and they were talking about issues with the cooler when the claimant took his gloves off and said he quit. The claimant had walked out on two prior occasions, so the employer expected him to return this time; but, when he did not come back after six hours, the employer sent him a text message stating he would give him a good reference for subsequent employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The employer went to the restaurant to have a discussion with the claimant about the consistency of the food and other issues. They had a routine conversation about the business and what the employer felt where the claimant's responsibilities. He had not prepared any type of warning for the claimant or arranged a back up for the claimant to work that evening. He had no intention of terminating the claimant's employment, but the claimant took off his gloves and said, "I quit," and walked out after they had been talking for approximately 45 minutes. The claimant blamed the issues on equipment problems but did not allege unlawful, intolerable, or detrimental working conditions as required by Iowa law. Consequently, he has not met his burden of proving his leaving was for good cause attributable to the employer. Therefore, benefits must be denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The February 17, 2011, reference 02, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw