

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY R KYLE
Claimant

APPEAL NO. 12A-UI-06667-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LUTHER CARE SERVICES/HOMES FOR
THE AGING**
Employer

OC: 05/13/12
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Luther Care Services, filed an appeal from a decision dated May 31, 2012, reference 01. The decision allowed benefits to the claimant, Timothy Kyle. After due notice was issued, a hearing was held by telephone conference call on June 28, 2012. The claimant participated on his own behalf. The employer participated by Property Manager Sonny Lande.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Timothy Kyle was employed by Luther Care Services from February 5, 2001 until May 3, 2012 as a full-time employee. He began as an assistant maintenance supervisor and became maintenance supervisor August 11, 2005.

On May 2, 2012, Property Manager Sonny Lande told the claimant he was going to be reclassified as a maintenance technician at the same hours and wages as he held at the current time. He was being relieved of supervisory duties because there had been substantial complaints about the workers under his authority not getting their work done and a lot of “standing around.”

Mr. Kyle became upset and resigned because he believed he was still going to be doing all his former duties but with a lesser title. This was not the case, he would be doing the same type of maintenance work but not supervising others, though working the same hours and earning the same pay.

The property manager told the claimant to go home and think about it and come back the next day. On May 3, 2012, the claimant confirmed his resignation in writing.

Timothy Kyle has received unemployment benefits since filing a claim with an effective date of May 13, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The claimant quit because his job title had been changed from Maintenance Supervisor to Maintenance Technician but that was the only change except no supervisory duties. This is not a substantial change in the contract of hire and therefore the resignation was without good cause attributable to the employer.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of May 31, 2012, reference 01, is reversed. Timothy Kyle is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css