

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RAY C WILSON SR Claimant CODY CAL INC Employer	68-0157 (9-06) - 3091078 - EI APPEAL NO. 08A-UI-04496-DT ADMINISTRATIVE LAW JUDGE DECISION OC: 04/06/08 R: 02 Claimant: Appellant (1)
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Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Ray C. Wilson, Sr. (claimant) appealed a representative's May 1, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Cody Cal, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 27, 2008. The claimant received the hearing notice and responded by calling the Appeals Section on May 14, 2008. He indicated that he would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, claimant was not available; therefore, the claimant did not participate in the hearing. Rather, only one witness was available on behalf of the claimant, Aaron Stevens, the claimant's nephew. The claimant had contacted Mr. Stevens at approximately 8:00 a.m. on the date of the hearing and had indicated to Mr. Stevens that he would not be available to participate in the appeal hearing, but requested Mr. Stevens provide his testimony. The claimant did not contact the Appeals Section or the administrative law judge to request a rescheduling of the hearing. Susanne Summy appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on August 7, 2007. He worked part time (32 to 36 hours per week) as a cook at the employer's restaurant. He typically worked four nights per week from approximately 3:00 p.m. until between 9:30 p.m. and 10:30 p.m., usually Friday, Saturday, Wednesday, and either Monday or Tuesday. His last day of work was January 25, 2008. He was a no-call/no-show for his shifts after that date. On February 15, 2008 he came to the restaurant to pick up his final paycheck, and signed a statement indicating that he had voluntarily quit his position. While he did not voice his complaints to the employer, he indicated to Mr. Stevens that he had quit because he was fed up with always being given the menial tasks and with not being given regular breaks.

The employer did not have scheduled break times for the kitchen staff, but they were allowed to take restroom breaks and water breaks as needed. Ms. Summy, the restaurant general manager, had been aware of a concern the claimant had in late October 2007 that he was being instructed to do the mopping too often, and she had spoken to the claimant's supervisor. She had checked back with the claimant a week or two thereafter and he told her that there had been no further problems. She told him that if he had further concerns, he should speak with her, but he never brought any other concerns to her attention.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's May 1, 2008 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of January 26, 2008,

benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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