

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LESLIE S MORIARTY
Claimant

APPEAL NO. 12A-UI-09356-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CR ENGLAND
c/o EMPLOYERS UNITY LLC
Employer

OC: 06/17/12
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated July 25, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that he quit work because working conditions were detrimental to him. After due notice, a telephone hearing was held on August 28, 2012. Claimant participated. Employer participated by Mr. Jerry Sander, Hearing Representative, and witness, Ms. Trace Billingsly, Phase II Training Coordinator.

ISSUE:

The 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. Leslie Moriarty began employment with the CR England company on April 26, 2012. The claimant completed Phase I Tractor Trailer Driver Training on June 1, 2012 and on June 4, 2012 began Phase II training. Mr. Moriarty was employed full time and was paid by the mile. The claimant's Phase II training took place while Mr. Moriarty accompanied another company driver who had completed Phase II training and provided on-the-job training to the claimant.

On June 9, 2012, Mr. Moriarty and his Phase II trainer got into a verbal disagreement about petty matters including how Mr. Moriarty was washing the tractor's windshield and whether the claimant was properly using an air gauge to check tire pressure. Mr. Moriarty believed that the other driver had made disparaging statements about him stating on one occasion "I kinda thought you were a nerd." The claimant had been dissatisfied because of a previous dispute in the route to be taken believing that the Phase II trainer had taken the wrong route.

Because of his dissatisfaction, Mr. Moriarty called a previous trainer at the CR England company and was put through to a second number where he left a message. An individual working the weekends at the company advised the claimant to get a cab and go to a motel pending the resolution of the matter. That Monday the claimant caught a ride with another CR

England driver to Des Moines, Iowa. The claimant then went to his residence. Mr. Moriarty did not make contact with his designated trainer, Trace Billingsly on Saturday, June 9, 2012 or the following Monday. At the time that the claimant went into Phase II training he met Ms. Billingsly and was personally provided her business card providing her e:mail address, telephone numbers and Qual-Com address. The claimant did not contact his trainer for resolution of the problem. After the employer had not heard from Mr. Moriarty again for several days the employer reasonably concluded the claimant had chosen to leave his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes 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.

871 IAC 24.25(27) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (27) The claimant left rather than perform the assigned work as instructed.

871 IAC 24.26(4) 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:

- (4) The claimant left due to intolerable or detrimental working conditions.

The claimant has the burden of proving the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6(2). An individual who voluntarily leaves their 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). Claimants are not required to give notice of intention to quit due to intolerable, detrimental or unsafe working environments if the employer had or should have had reasonable knowledge of the condition. Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1(Iowa 2005).

Quits due to intolerable, detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993). The evidence in the record does not establish that working conditions were intolerable but does establish that the claimant and his trainer could not get along. Good cause for leaving employment must be that which is reasonable to the average person not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Fla. App. 1973). In the case at hand the claimant appears to be overly sensitive. Although the comments from his trainer may have been inappropriate, those comments alone were not sufficient to create an intolerable work environment.

Inasmuch as the claimant had the direct number of his immediate trainer and had the ability to directly contact her but did not do so to resolve his complaints prior to leaving employment, the separation was without good cause attributable to the employer. Benefits are denied.

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.

DECISION:

The representative's decision dated July 25, 2012, reference 01, is reversed. Claimant left employment without good cause attributable to the employer. 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 and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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