

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM E BYSTROM**  
Claimant

**APPEAL NO. 14A-UI-02477-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERISTAR CASINO CO BLUFFS INC**  
Employer

**OC: 02/09/14**  
**Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated February 28, 2014, reference 01, which denied benefits finding that the claimant voluntarily left employment without good cause attributable to the employer. After due notice was provided, a hearing was held in Council Bluffs, Iowa on April 2, 2014. Mr. Bystrom participated personally. Participating as the claimant's designated representative was his wife, Alisha Bystrom. Appearing as subpoenaed witnesses were Gregory Encimas, Director of Food and Beverage; Timothy Curry, LeFay Sous Chef; and Kathy Bowlds, Cook II. The employer participated by Ms. Alyce Smolsky, Hearing Representative and witnesses, Tammy Spearman, Team Relations Manager and Ed Powers, Production Chef. Claimant's Exhibits One, Two, Three, Four, Five, Seven, Eight, Nine and Ten and Twelve were received into evidence. Claimant's Exhibits Six and Eleven were offered into evidence but were not received, but will remain with the administrative file.. Employer's Exhibit A was received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all the evidence in the record, the administrative law judge finds: William Bystrom began employment with Ameristar Casino Council Bluffs in August 2010 and was employed until February 11, 2014 when he voluntarily left employment. Mr. Bystrom held the position of cook II assigned in the cooking department of the facility's Star Club. Mr. Bystrom was employed full time and was paid by the hour. His most recent immediate supervisor was Louis Palacio, Sous Chef.

Mr. Bystrom voluntarily quit his employment with Ameristar Casino Council Bluffs on February 11, 2014 when he resigned via telephone call to Mr. Powers, the production chef, stating "I can no longer work for that man." The claimant's reference was to his supervisor, Mr. Palacio. Mr. Bystrom had requested a transfer to a different job position in the casino two days previously in a call to Mr. Powers. The claimant's request was denied at that time because of a lack of job openings and because the claimant had not followed the procedure required to obtain a different position within the company.

Mr. Bystrom left his employment due to general dissatisfaction with Mr. Palacio's management practices and disagreement with decisions that his supervisor had made about the food preparation and its storage. As time progressed, the claimant also believed that Mr. Palacio was treating him unfairly in the manner that he scheduled the claimant and because Mr. Palacio was not responsive to Mr. Bystrom's stated opinions about how the kitchen area for the Star Club should be run.

Mr. Bystrom and other Star Club kitchen workers had become accustomed to the management style of the previous Sous Chef. When Mr. Palacio was hired, the claimant initially found Mr. Palacio to be likeable, however, as time progressed, the claimant began to have more disagreements with the manner in which Mr. Palacio and the Star Club's kitchen department. The new sous chef's management style was significantly different from the previous sous chefs in the way that Mr. Palacio wanted food prepared and stored also differed significantly in a number of ways. When Mr. Bystrom found the new sous chef was not responsive to his concerns, the claimant brought his concerns to Mr. Powers, the facility's production chef, and also brought his dissatisfaction to the attention of the company's human resource department. Mr. Bystrom also informed Timothy Curry, a chef II, as well to Gregory Encimas, the director of food and beverage.

Mr. Bystrom had been written up by his supervisor on December 17, 2013 after Mr. Bystrom had used his I-Pad to photograph portions of the Star Club's salad bar in violation of a policy that prohibited hourly employees from photographing anything within the casino. The claimant was also written up on December 17, 2013 because of what was considered to be a negative statement made by the claimant in response to a general question posed by a management person.

Because of Mr. Bystrom's complaints to management, the director of food and beverage met with both Mr. Bystrom and his supervisor, Mr. Palacio on December 24, 2013 to address the claimant's complaints. Mr. Palacio was advised to be more responsive to the claimant's concerns and Mr. Bystrom's concerns about food preparation safety were concluded as being unfounded as regular health department inspections had shown no violations.

Based upon the meetings that were held by management to resolve the issues between Mr. Bystrom and his supervisor, Mr. Bystrom believed that the working conditions in his department would improve and the claimant applied for a promotion to the position of cook III in the department. Mr. Bystrom was on an approved vacation from January 15, 2014 through January 26, 2014. After his return from vacation, Mr. Bystrom learned that he had not received the promotion to cook III.

On February 8, 2013, Mr. Bystrom received a verbal warning from Amielda Carlson, a Star Club manager, about the cleanliness of a portion of the dessert area. Although there were dessert crumbs in the area, Mr. Bystrom felt that the verbal coaching was unjustified. Although the warning had not been given to him by Mr. Palacio, it appears that Mr. Bystrom believed that Ms. Carlson had given him the warning because she supported Mr. Palacio and not the claimant. The following day Mr. Bystrom telephoned Mr. Curry to request a different job position and telephoned to quit his job on February 11, 2014. At the time Mr. Bystrom mentioned

quitting, the claimant was urged to provide a two-week notice and Mr. Curry referenced the difficulty Mr. Bystrom might have obtaining other work as a cook in the geographic area because all the cooks for major facilities knew each other.

### **REASONING AND CONCLUSIONS OF LAW:**

The questions before the administrative law judge are twofold. The first question is whether the claimant believed that he had good cause personal reasons to leave his employment. He did. The second question is whether the claimant's reasons for leaving were good cause reasons attributable to the employer. They were not.

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(22) and (28) 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:

(22) The claimant left because of a personality conflict with the supervisor.

(28) The claimant left after being reprimanded.

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). 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 work environments if the employer had or should have had reasonable knowledge of the condition. Hy-Vee v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005).

Quits due to intolerable or 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).

When a person voluntarily quits employment because of a personality conflict with the supervisor or due to dissatisfaction after being reprimanded the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(22) and IAC 24.25(28).

The evidence in the record in this matter does not establish intolerable or detrimental working conditions sufficient to establish good cause for leaving attributable to the employer. The

evidence does establish that the claimant and other kitchen personnel in the area where Mr. Bystrom worked had become accustomed to the management style and cooking style of the previous sous chef in charge of the area. The evidence also establishes that when a new sous chef was hired Mr. Bystrom and some of the other employees found the new supervisor's management style and cooking practices to be significantly different in some respects. Mr. Bystrom and at least one other cook had gone to management to complain about the management practices, the cooking practices and the food storage practices of the new sous chef. Mr. Bystrom had especially been upset because he had received two written warnings on December 18, 2013 from Mr. Palacio because of a statement that Mr. Bystrom had made to a management individual and because Mr. Bystrom had violated a general Casino policy that prohibited any picture taking within the facility. When Mr. Bystrom had refused to sign the warnings, his supervisor had made a rhetorical statement, "I can't put a gun to your head and make you sign." In addition to his other dissatisfactions Mr. Bystrom interpreted that remark as a personal threat to harm him instead of a rhetorical statement.

Based upon Mr. Bystrom's complaints, company management addressed his concerns by calling a meeting between the parties to resolve the issues. The employer also considered Mr. Bystrom's complaints about food preparation and food safety and concluded that they were not founded because regular health department inspections had found no violations.

The employer had concluded in early January 2014 that the matter had generally been resolved. Other employees had adapted to Mr. Palacio's management and cooking styles and in turn Mr. Palacio appears to have adopted his procedures to be more in line with the way that the previous sous cook operated the kitchen department. Prior to leaving on vacation in mid-January, Mr. Bystrom also had concluded that things appeared to be getting better and that he hoped for a job promotion.

Upon the claimant's return from vacation he found that he had not been promoted as he hoped and shortly thereafter on February 8 he received a verbal warning from another manager in the Star Club that Mr. Bystrom felt was unjustified. The claimant attributed the warning by the other manager, to that manager's support of Mr. Palacio and the following day Mr. Bystrom requested that he be transferred out of the Star Club and his request could not be approved. The claimant quit by telephone on February 11, 2014.

While the claimant's reasons for leaving were undoubtedly good cause reasons from his personal viewpoint, they were not good cause reasons 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.

**DECISION:**

The representative's decision dated February 28, 2014, reference 01, is affirmed. The 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.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

css/css