

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOBY J ZIMMERMAN
Claimant

APPEAL NO: 10A-UI-01400-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CTY OF DES MOINES
Employer

OC: 12/27/09
Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed a representative's January 19, 2010 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive benefits. A telephone hearing was held on March 8, 2010. The claimant participated in the hearing. Michael Carter, Brian Becker and William Beverly 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 his employment for reasons that qualify him to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in October 2007. The claimant worked as a recreational specialist. Beverly supervised the claimant, but was on vacation the week of December 27, 2009.

The claimant worked with RN throughout his employment. RN was the claimant's mentor at work. The claimant and RN developed a friendship outside of work. The claimant and RN had a disagreement around Christmas. The claimant was with his girlfriend's family on Christmas. RN made a number of calls and or text messages to the claimant's girlfriend's phone number. The claimant did not have his phone with him. During his phone call(s) RN threatened to come after the claimant and his girlfriend's family. After the claimant received the messages from RN, he sent Becker a message on December 25 and reported the problems he had with RN. Becker responded by telling the claimant to ignore RN and Becker would deal with the situation on Monday, December 28. The claimant's girlfriend's mother wanted to report RN's calls and behavior to the police, but the claimant did not want to do this. The claimant did not know if RN had been drinking before he called or sent text messages.

Sunday evening, the claimant contacted Becker to report he did not feel comfortable working with RN the next day. Becker again indicated he would address the situation the next morning. Becker first talked to the claimant. The claimant told Becker he did not feel comfortable working with RN and wanted to have the rest of the week off from work. The claimant showed Becker the text messages RN had sent. Becker did not see any text messages that he considered threatening. Becker told the claimant he was going to talk to RN and would let him know later if he needed to report to work or would not have to work.

Before Becker met with RN, he thought the problem between RN and the claimant could not be resolved and the claimant would be allowed some time off. After Becker talked to RN, he concluded RN would not cause any problem and would not harm the claimant if the two of them worked at the same community center. Becker decided the claimant should report to work at the community center he was scheduled to work at even though RN was also working there. Becker contacted the claimant and told him to report to work.

Instead of reporting to work, the claimant submitted his resignation because the employer would not allow him to take time off and instead told him to work at the same location as RN was working. The claimant indicated he would work the rest of the week if the employer allowed him to work at a location RN was not working. The employer accepted the claimant's resignation effective immediately.

The claimant established a claim for benefits during the week of December 27, 2009. He has filed for and received benefits since December 27, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6-2.

The law presumes a claimant voluntarily quits without good cause when he leaves because of unsafe working conditions. 871 IAC 24.26(2). The claimant was understandably nervous to work or be around RN after RN made threatening comments on December 25. The fact the claimant did not report the threats to the police undercut his credibility that he really felt as unsafe as he asserted. Based on an incident that happened outside of work to employees who were friends outside of work, the employer's actions on Monday, December 28, 2009, were not unreasonable. The employer talked to both the claimant and RN before deciding it was safe for the claimant to work at the same facility as RN. The employer did not ask the claimant to work alone with RN, Becker would be there along with other people. The claimant resigned based on a potential problem with an old mentor and friend. The claimant quit because of potential problems. He did not establish that he quit because of unsafe working conditions. Therefore, as of December 27, 2009, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's January 29, 2010 decision (reference 01) is reversed. The claimant voluntarily quit his employment for personal reasons. He did not establish that he quit for reasons that qualify him to receive benefits. The claimant is disqualified from receiving

unemployment insurance benefits as of December 27, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is Remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css