

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY J DILLON
Claimant

APPEAL NO. 10A-UI-12052-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NORWALK COMMUNITY
SCHOOL DISTRICT**
Employer

**Original Claim: 07/25/10
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Norwalk Community School District filed a timely appeal from a representative's decision dated August 24, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits, finding the claimant was forced to resign on August 31, 2010, or be discharged. After due notice was issued, a telephone hearing was held on October 14, 2010. The claimant participated personally. The employer participated by Kate Baldwin, business manager, and Dale Barnhill, principal. Employer's Exhibits One through Six were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Mr. Larry Dillon was employed by Norwalk Community School District from August 2005 until August 31, 2010, when he voluntarily resigned his position to seek other employment. Mr. Dillon was employed as a full-time special education teacher and coach and was paid by salary. His immediate supervisor was Mr. Dale Barnhill, the school principal.

On January 6, 2010, Mr. Dillon submitted a letter of resignation effective the end of the school year, August 31, 2010. In the letter, Mr. Dillon stated that he was leaving to seek other employment as a high school social studies teacher (See Exhibit One).

In October of 2009, the claimant's immediate supervisor, Mr. Barnhill, met with the claimant to discuss performance concerns. Subsequently, in December Mr. Barnhill met with Mr. Dillon and indicated the school district's desire to place the claimant on a remedial performance mediation plan. The purpose of the plan was to improve Mr. Dillon's performance issues. Under the collective bargaining agreement between the school district and the teacher's bargaining unit, remediation plans were required to improve employee's work.

In December of 2009 the claimant was placed on a Tier III evaluation cycle for the 2010-2011 school year. Mr. Dillon was requested to select candidates for the improvement committee that would be working with the remedial performance mediation plan. At that time, Mr. Dillon indicated to the principal, Mr. Barnhill, that he was resigning to look for other employment where he could teach social studies and be a football coach. Approximately three weeks later, Mr. Barnhill inquired about the selections for the improvement committee and asked Mr. Dillon whether the claimant had changed his mind about resigning. Mr. Dillon responded that he had not changed his mind and subsequently submitted his written resignation.

It was Mr. Dillon's belief that, based upon a previous incident where he had been absent from teaching for three days due to illness but had coached football for a different school district after being released by his physician on the third day, the school district had lost trust in him and would cause his employment to come to an end. Mr. Dillon believed that he had been "singled out" for special attention and believed that the school district thought he had been untruthful about his previous absence due to illness. Based upon statements from other teachers and a representative of the union, Mr. Dillon believed that he might be "pressured" during the Tier III evaluation process into leaving employment. The claimant was unaware that no other teachers had been discharged during the Tier III evaluation process but was aware that the purpose of the process was to improve a teacher's performance and keep them employed. Mr. Dillon does not dispute that he had performance issues. Mr. Dillon completed the school year and resigned effective August 31, 2010, the date that he had stated in his resignation letter.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Mr. Dillon left employment with good cause attributable to the employer. It does 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.

The evidence in the record establishes that Mr. Dillon had performance issues and that when the performance issues continued in December of 2009, the school principal indicated that the intent of the district was to have the claimant enter into a remedial performance mediation plan that was required under the collective bargaining agreement to improve the performance of a teacher. Based upon statements from peers, Mr. Dillon concluded that the process might be difficult and the claimant chose to leave employment and seek employment with a different school district where he could teach social studies and coach football.

The evidence in the record establishes that the individuals who Mr. Dillon had spoken with had not indicated that he would be discharged from employment or that it was the intent of the school district to discharge the claimant. Mr. Dillon was also not aware that no teachers who had entered the remedial performance mediation plan had been discharged in the past at the Norwalk Community School District.

Based upon the totality of the evidence in the record, the administrative law judge concludes that Mr. Dillon's leaving employment was not attributable to the Norwalk Community School

District but instead was based upon the claimant's personal perception that the district might be trying to force him out of his employment. The claimant's perception was not based upon on any demonstrable evidence.

While Mr. Dillon's decision to leave his employment may have been a good decision from a personal viewpoint, it was not a good-cause reason attributable to the employer. The employer was exercising its obligation under the bargaining agreement to offer Mr. Dillon a vehicle for improving his performance and remaining employed by the district. Mr. Dillon instead chose to leave employment to seek employment elsewhere. Good cause for leaving attributable to the employer has not been shown. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he meets all other eligibility requirements of Iowa law.

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 issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated August 24, 2010, reference 01, is reversed. 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. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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