

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L MEEKS
Claimant

APPEAL NO. 10A-UI-11311-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF WATERLOO
Employer

OC: 06/13/10
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
871 IAC 24.26(21) – Forced Resignation

STATEMENT OF THE CASE:

The employer appealed a department decision dated August 3, 2010, reference 01, that held the claimant was forced to resign on January 27, 2010, and that allowed benefits. A telephone hearing was held on September 29, 2010, and concluded on November 3. The claimant participated. Bob Stringer, HR director; Ernest “Buck” Clark, mayor; Shelly Kruger, administrative secretary for human rights/secretary for human rights commission; Teresa Wasko, AmeriCorps/VISTA volunteer; and Robin Means, housing coordinator for Kelly Services, participated for the employer. Employer Exhibits 1 through 6 were received as evidence.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant worked for the employer as human rights director from September 7, 2005 to January 27, 2010. The employer issued claimant a job performance warning on February 11, 2008 that was primarily based on absenteeism and tardiness.

Mayor-elect Clark received a complaint from the Human Rights Commission about the claimant that he investigated after taking office on January 4, 2010. After reviewing the claimant’s attendance history with department records and staff interviews, Mayor Clark concluded that his absenteeism was excessive and that he would release him from employment. Clark decided he would give the claimant the opportunity to resign rather than have an employment termination stigma on his record.

On January 27, Mayor Clark advised the claimant that he had made the decision to release him (meaning from employment). Clark gave the claimant the option to tender a resignation letter or be released from employment. The claimant took the matter under advisement. The claimant

understood Mayor Clark wanted to make a change and go a different direction. Since the claimant understood he was an "at will" employee, the mayor had the right to make the change.

The claimant e-mailed Clark on January 28 that he was resigning his position as human rights executive director for personal reasons. The employer accepted the resignation.

REASONING AND CONCLUSIONS OF LAW:

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 24.26(21) 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:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The administrative law judge concludes the claimant voluntarily quit with good cause attributable to his employer due to a forced resignation on January 28, 2010 that is not considered a voluntary leaving. A quit-or-be-fired separation from employment is governed by 871 IAC 24.26(21).

The employer concedes that the claimant was going to be released (terminated), but he was given the choice to resign or be released. A forced resignation is not a voluntary leaving of employment, and it is listed under the department rule(s) as a good cause for quitting employment. There is no provision in this rule that should the claimant elect resignation and separate from employment for this reason that the issue of misconduct under 96.5-2-a should be considered to deny unemployment benefits.

DECISION:

The department decision dated August 3, 2010, reference 01, is affirmed. The claimant voluntarily quit with good cause attributable to the employer when he was forced to resign on January 28, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw