

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MIKE H THOMAS**  
Claimant

**APPEAL NO: 11A-UI-16268-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARK BERNOW INC**  
Employer

**OC: 11/06/11**

**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

Mike H. Thomas (claimant) appealed a representative's December 13, 2011 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Mark Birdnow, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 23, 2012. The claimant participated in the hearing and presented testimony from two other witnesses, Bob Hanna and Dana Schmitt. Brad Curby appeared on the employer's behalf and presented testimony from one other witness, Eric Landergott. 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 for a good cause attributable to the employer?

**OUTCOME:**

Reversed. Benefits allowed.

**FINDINGS OF FACT:**

After a prior period of employment with the employer, the claimant most recently began working for the employer on or about June 1, 2010. He worked full time as a sales representative and assistant manager in the employer's Independence, Iowa auto dealership. His last day of work was November 2, 2011. He voluntarily quit work as of that date.

On the morning of November 2, shortly after the start of business at 9:00 a.m., the claimant had a disagreement with the location manager, Landergott, about putting out all the keys to all the cars on such a cold day. At one point in the discussion, Landergott back-handed the claimant's genital area. The claimant then went back to his desk area. He was embarrassed by what had happened, and was upset that Landergott was continually engaging in horseplay by hitting his back or punching his shoulders, despite the claimant's request that this stop. The claimant's witnesses had both witnessed Landergott making these unwanted physical contacts with the

claimant on a regular basis, although interestingly enough, these incidents did not occur when the general manager, Curby, was visiting that location from his base in Jesup. The claimant determined that he could not take it anymore, so at about 10:00 a.m. he got up and left.

Later that day Landergott went to the claimant's house to try to talk to him, and apologized for the physical contact that morning. The claimant indicated to leave him be for the day, and they would talk later. Curby later learned that the claimant had left, and arranged to meet with him, which occurred a few days later that week. The claimant declined to return to work so long as Landergott would be working at the dealership.

**REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787 (Iowa 1956).

Intolerable or detrimental working conditions are good cause for quitting attributable to the employer. 871 IAC 24.26(4). The claimant has demonstrated that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). Benefits are allowed.

**DECISION:**

The representative's December 13, 2011 decision (reference 02) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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