

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MICHAEL D KING
APT 34
3700 PATRICIA DR
URBANDALE IA 50322-3942

LUKEMILL ENTERPRISES INC
THE CLUB CAR RESTAURANT
13435 UNIVERSITY AVE #200
CLIVE IA 50325

MICHAEL D KING
226 1ST ST
WEST DES MOINES IA 50265

Appeal Number: 06A-UI-08032-JTT
OC: 07/16/06 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Michael King filed a timely appeal from the August 8, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 24, 2006. Mr. King participated. Owner Mary Wellman represented the employer and presented additional testimony through Kitchen Manager Clint Papin.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael King was employed by the Club Car Restaurant as the full-time kitchen manager from May 2005 until July 17, 2006, when he quit. Mr. King submitted his written resignation to owner Mary Wellman on July 6 and indicated at that time that his last day would be July 21. In response to the written resignation, Ms. Wellman met with Mr. King on July 7 to discuss the

basis for his resignation. Mr. King indicated at that time that he was burnt out at the employment, did not believe he was employed to his full potential, and believed it was time to move on. Mr. King encouraged the employer to hire his replacement before his notice period ended so that Mr. King could assist with training the new kitchen manager. On July 17, the new kitchen manager, Clint Papin, commenced his employment. Mr. King spent approximately three hours orienting Mr. Papin to the workplace and the duties of kitchen manager. Mr. King then told Mr. Papin that he was burnt out and could not continue in the employment. Mr. King gave his keys to Mr. Papin and made his quit effective at that time.

Mr. King had concerns with the employment that contributed to his decision to quit. In June 2005, another employee made the employer aware that Mr. King was on the sex offender registry. The employer decided to continue Mr. King's employment. However, Mr. King perceived that the employer and staff responded to him differently after his status as a registered sex offender came to light. Mr. King had concerns about owner Dave Tasler's conduct toward two employees. However the conduct at issue had taken place six to nine months prior to Mr. King's quit and no similar conduct had occurred thereafter. Mr. King was concerned that Mr. Tasler sometimes consumed alcohol at the workplace, but Mr. King had most recently observed Mr. Tasler consuming alcohol at the workplace approximately a month and a half before Mr. King quit.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. King's voluntary quit was for 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

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 Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

On the other hand, quits prompted by dissatisfaction with the work environment are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21).

The greater weight of the evidence establishes that Mr. King quit the employment for personal reasons relating to general dissatisfaction with the employment or working environment. Though the incidents involving physical conduct directed at two employees by one of the owners would have been cause for concern at the time incidents took place, the weight of the evidence does not indicate that these events created intolerable or detrimental working conditions that would prompt Mr. King to quit six to nine months later. Likewise, though observing one of the owners consuming alcohol in the course of business may have provided cause for concern, the most recent such incident observed by Mr. King occurred a month and a half before his quit and did not prompt the quit. The evidence does not support Mr. King's assertion that the employer discriminated against him based on his status as a registered sex offender. The mere fact that some staff members may have responded to Mr. King somewhat differently after becoming aware of Mr. King's sex offender status does not indicate intolerable or detrimental working conditions that would prompt a reasonable person to quit the employment.

The evidence in the record indicates that Mr. King voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. King is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

DECISION:

The Agency representative's August 8, 2006, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

jt/pjs