

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES C MERRILL
Claimant

APPEAL NO. 11A-UI-15952-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ON THE WATERFRONT SEAFOOD
RESTAURANT INC**
Employer

**OC: 10-30-11
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 9, 2011, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on January 18, 2012. The claimant did participate. The employer did not participate. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Did the claimant voluntary quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a cook full time beginning in 2009 through January 14, 2011 when he voluntary quit. The claimant quit because of repeated harassment he received while working in the kitchen. Brian Kirkman, another employee, would light a bamboo food skewer on fire and then attempt to burn the claimant with it. Additionally, Brian and another employee Shawn Hankey, Jr. would make derogatory comments to and about the claimant's sexual orientation. The comments and harassment was ongoing from January 2010 through January 2011 despite the claimant's complaints to supervisor Earl Hoss. The claimant asked manager Lisa and Jessica to speak with Brian in an attempt to end the harassment but to no avail. The last event occurred when the claimant was working a very busy weekend night and Brian chose to make comments about the claimant "working his ass off" and that the claimant "liked it in his ass." After so long with no decrease in the harassing comments and with no assistance from the supervisor, the claimant could no longer tolerate the working conditions and voluntarily quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with good cause attributable to the employer.

Iowa Code § 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(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

The claimant was subjected to near constant derogatory slurs and comments from his coworkers regarding his sexual orientation. His complaints to management did nothing to remedy the situation. The claimant was physically assaulted with burning bamboo skewers and could no longer tolerate the abuse. He has met his burden to establish that the employer created an intolerable working environment. His leaving was with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The December 9, 2011, reference 03, decision is reversed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css