

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON E BAILEY

Claimant

APPEAL NO. 13A-UI-04140-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON RETAIL DELI MEATS INC

Employer

OC: 03/03/13

Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Tyson Retail Deli Meats, Inc. filed a timely appeal from a representative's decision dated March 29, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on May 9, 2013. Claimant participated. The employer participated by Mr. Matthew Hase, Employment Manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jason Bailey began his employment with Tyson Retail Deli Meats, Inc. in approximately October 2012. Mr. Bailey was hired as an hourly production worker and was paid by the hour. Mr. Bailey left his employment with this employer on February 14, 2013.

After being hired as a production worker, Mr. Bailey bid on a maintenance position within the company. Employees who bid on maintenance jobs are hired into those job positions on a probationary basis because the job requires an expanded knowledge of maintenance procedures and employees are given a period of time to demonstrate their general competency before their placement in the maintenance job becomes permanent. Company employees are aware of this process in advance.

On or about February 14, 2013, Mr. Bailey's maintenance supervisor, Chris Putzier, informed Mr. Bailey that his learning progress during the initial probationary period as a maintenance worker had not been satisfactory. Mr. Putzier went on to say that the fault, in part, was caused by a lack of opportunity for Mr. Putzier and others to train Mr. Bailey. During the conversation, Mr. Putzier offered to extend Mr. Bailey's probationary period in the maintenance position

asking Mr. Bailey to “assure him” he would make satisfactory training progress. The claimant’s other option was to be returned to production work per the normal policy when employees are not able to meet the level of competence in positions that they have been placed into on a probationary basis.

Mr. Bailey elected not to take either of the options offered to him that day by either extending his training or returning to the job that he was hired on as a production worker. Mr. Bailey instead chose to quit employment. The claimant’s reason was that he felt he could not “promise” Mr. Putzier that he would be competent at the end of the next probationary period because the responsibility for the training rested in large part on Mr. Putzier. Work continued to be available to Mr. Bailey at the time of his leaving.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause that was 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.

871 IAC 24.26(1) 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:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6(2). An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993).

In this matter, Mr. Bailey had bid on a maintenance position knowing in advance that his being placed in the maintenance position was probationary and contingent upon demonstrating general competence in the mechanical field within a period of time specified by the employer. Under the agreement between the company and the bargaining unit, employees who fail to meet the competency requirement at the conclusion of the probationary period are returned to their previous or similar positions within the company. Mr. Bailey chose to leave employment when it was determined that he had not reached the level of competency expected by the employer during a probationary period for his new maintenance position. Claimant was given

the reasonable alternative of returning back to his regular job or a similar production job but chose not to accept it although he knew that that was a contingency when he accepted the probationary placement into the maintenance department. Mr. Bailey was also unwilling to extend the period of training/probation although it was offered to him because he felt he could not “guarantee” that he would reach competence at the end of that probationary period.

Although the administrative law judge is aware that Mr. Bailey felt that the amount of training that he would receive was controlled by his supervisor, the administrative law judge considers the supervisor’s statement to Mr. Bailey to be more of a rhetorical statement than an actual requirement that the claimant “assure” his supervisor that competency would be met. Mr. Bailey had the option of remaining in his job position and attempting to improve his skills; at worse the claimant would have been re-assigned back to production at a later date. Claimant nevertheless chose to leave his employment at that time.

While Mr. Bailey’s reasons for leaving were undoubtedly good from his personal viewpoint, for the above-stated reasons the administrative law judge concludes that the claimant’s reasons for leaving were not good cause reasons attributable to the employer. Claimant knew that the placement in the maintenance job was probationary. He was given an opportunity to extend his training or return to other work but chose to leave work instead. Benefits are withheld.

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.

DECISION:

The representative's decision dated March 29, 2013, reference 01, is reversed. 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 Claims Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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