

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZACHERY L MARTIN
Claimant

APPEAL NO. 15A-UI-02178-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WADSWORTH OLD CHICAGO INC
Employer

OC: 01/25/15
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a representative's decision dated February 6, 2015, reference 01, which denied unemployment insurance benefits finding the claimant had voluntarily left his work without good cause. The claimant's appeal was due to be postmarked or received by the Appeals Section by February 16, 2015. Claimant's appeal was received on February 17, 2015 and is considered timely because the preceding day was a holiday. After due notice, a telephone hearing was held on March 23, 2015. Claimant participated. The employer participated by Mr. Tom Kuiper, Hearing Representative, and witness: Chris Odenthal, Assistant General 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: Zachery Martin was employed by the captioned company d/b/a Old Chicago from July 18, 2014 until January 17, 2015 when he voluntarily left employment due to dissatisfaction with the work environment. Mr. Martin was employed as a full-time server and was paid by the hour.

Mr. Martin left his employment with Old Chicago on Saturday night, January 17, 2015, prior to the end of the work shift after the assistant manager raised his voice at the claimant and stated, "What do we need to do at Old Chicago to accommodate you?" While making this statement, Mr. Odenthal knelt on one knee to emphasize his statement to Mr. Martin. The assistant manager had attempted to satisfy a previous request that Mr. Martin had made and believed that the claimant was acting unreasonably in repeatedly trying to expedite food orders for his patrons over other customers. Mr. Martin had also been dissatisfied for a long period of time because a company cook had called Mr. Martin a "bitch" on a number of occasions in the past. Mr. Martin had not brought this to the attention of management, however.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant left employment with good cause attributable to the employer. He did not.

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.

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 608, 612 (Iowa 1980) and Peck v. Employment Appeal Board, 492 N.W. 2d 438 (Iowa Ct. App. 1992). Mr. Martin gave evidence of his intention to quit by walking off the job during his work shift on January 17, 2015.

Mr. Martin left his employment, at that time, because an assistant manager had raised his voice while asking what else the company could do to accommodate the claimant that night. While doing so, the assistant manager had gone down to one knee, emphasizing the statement. The assistant manager's conduct was caused, however, because Mr. Martin had on more than one occasion attempted to have the items being prepared for his patrons completed ahead of other patrons who were being served by other servers. Mr. Martin was also dissatisfied, in general, because a cook had often referred to him in a negative way, however, the evidence does not establish that Mr. Martin had sufficiently brought this matter to the attention of management so that his dissatisfaction could be addressed.

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 Services, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

When a person voluntarily quits the employment due to dissatisfaction with the work environment or inability to work with other employees, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21) and (6).

The administrative law judge concludes that while Mr. Martin's reasons for leaving his employment may have been good cause reasons from his personal viewpoint, they were not good cause reasons that were attributable to the employer. The most recent conduct that caused the claimant to leave employment was in the nature of an isolated instance of poor judgment on the part of the assistant manager caused in part by Mr. Martin's repeated requests that evening. 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.

DECISION:

The representative's decision dated February 6, 2015, reference 01, is affirmed. The 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.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs