

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIKE L WATTS

Claimant

APPEAL NO. 10A-UI-11516-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

VALLEY WEST OIL COMPANY INC

JC'S CORNER STORE

Employer

OC: 07/04/10

Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Mike Watts (claimant) appealed a representative's August 16, 2010 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Valley West Oil Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for September 27, 2010, in Des Moines, Iowa. The claimant participated personally. Former co-workers Seth Watts, John Snyder, Phillip Abad, Megan Johnston, and Dennis Howard also testified on the claimant's behalf. The employer participated by Amy Ridgway, Corporate Secretary and Financial Officer, and Jim Staudenmaier, President. The claimant offered and Exhibits A and B were received into evidence. The employer offered and Exhibits One, Two, Three, and Four were received into evidence.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on August 10, 1987, and at the end of his employment was working as a full-time service manager. The claimant signed for receipt of the employer's handbook on October 29, 2004. The employer is a family-owned business. The claimant found it difficult to take varying instruction from the mother, father, sister and brother. At one time, the claimant considered purchasing the business. The claimant had been contributing to his 401k and stock in the company. He repeatedly asked for an accounting, but the employer would not provide the information.

On July 2, 2010, the employer terminated Seth Watts and Allen Abad. Four employees quit after the terminations. On July 7, 2010, the claimant quit work because he was upset about the terminations and because the employer failed to provide an accounting of money/benefits that

were owed to the claimant. At the time of the separation, the employer owed the claimant \$57,000.00.

At the hearing, the president testified that he borrowed employee's 401K money for a personal loan to himself of \$176,000.00 without written permission from the employees.

REASONING AND CONCLUSIONS OF LAW:

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

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer that he was leaving and quit work. In the absence of agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving the employment. Deshler Broom Factory v. Kinney, 140 Nebraska 889, 2 N.W.2d 332 (1942).

When an employee quits work because the employer did not pay wages or benefits when they were due without an agreement to the contrary, his leaving is with good cause attributable to the employer. The claimant left work because he did not receive his benefits when they were due or he did not have access to his benefits and there was no agreement to the contrary. His leaving was with good cause attributable to the employer. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's August 16, 2010 decision (reference 01) is reversed. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw