

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARRY A MUSSMAN
Claimant

APPEAL NO. 09A-UI-17459-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PAPETTI'S OF IOWA
Employer

**Original Claim: 10/04/09
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated November 6, 2009, reference 05, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 29, 2009. The claimant participated. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Barry Mussmann.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer produces food products for fast food restaurants. The claimant was hired on March 4, 2009. He was to work third shift and his responsibility was to clean and sanitize oven number five in what was known as pre-cook west.

One of the claimant's co-workers was a careless employee and the claimant, along with other employees, were often sprayed with chemicals on a daily basis. One of the chemicals that was used was very caustic. The foaming process was particularly hazardous and the claimant got a chemical burn on his ear as a result of this co-employee's carelessness. Complaints were made to both the lead employee and the supervisor. Nothing was done, except to suggest that the claimant leave when that employee did his foaming job.

The claimant's ear pain persisted due to the chemical burn. He asked for a transfer to another department or another shift and was informed that there were no other openings. He indicated to his employer that he would have to quit due to the dangers of working with this employee. Still nothing was done and the claimant submitted his resignation on April 30, 2009.

REASONING AND CONCLUSIONS OF LAW:

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(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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The evidence in this case established that the claimant voluntarily left his job with good cause attributable to the employer. The claimant had made numerous complaints to the employer about a co-employee who did his job in a careless, unsafe manner. The claimant was sprayed with chemicals on a nightly basis by this individual and suffered a chemical burn to his ear that was extremely painful. The claimant requested that something be done and was told to leave the room when the other employee was doing his foaming. The claimant asked for a transfer to a different spot or a different shift and was told that nothing was available. The only real option the employer gave the claimant was to continue working with an individual who did not do his job safely. The claimant reasonably perceived that working with this individual was unsafe. Since the claimant quit because the working conditions were detrimental to him, good cause is attributable to the employer. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated November 6, 2009, reference 05, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw