IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

STEVEN MEIER
Claimant

APPLE CORPS LP
Employer

APPEAL NO: 16A-UI-06752-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/22/16
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 14, 2016, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on July 6, 2016. The claimant participated in the hearing. Rhianna Brotzman, General Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment for 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 full-time line cook for Applebees from May 6, 2014 to May 25, 2016. He voluntarily quit his job by leaving without permission May 25, 2016. He did not call or return to work May 26, 27 or 28, 2016.

On May 25, 2016, the claimant and another line cook had a loud altercation in the kitchen. The claimant was upset because the afternoon line cook had not prepped his area and the other line cooks had not prepped their areas sufficiently in the claimant's opinion. Two line cooks were standing around instead of getting product out of the cooler so the claimant retrieved the items out of the cooler and told them to stock their stations when they got to work. The claimant did not have any supervisory authority and the other two line cooks were upset with him for telling them what to do. They all used profanity and name calling which escalated the situation. A manager stepped in between them and repeatedly told them to drop it. He told the claimant to go outside and calm down. One of the other line cooks said, "Let's go outside and I'll knock your fucking teeth out" and the claimant said, "C'mon. Let's go." Once outside the claimant decided he was "on the verge of becoming physical with a 20 year old" so rather than wait outside for the manager the claimant left the restaurant and went home. He called a manager and said he was not returning to finish his shift.

The claimant had several conflicts with other employees that required management intervention. The claimant also went to management several times to complain about the work environment. The employer described the claimant as “very vocal” if he came in and the afternoon cook did not have time to get his line ready.

The claimant received a final written warning December 3, 2015, after he and server, Melissa, had a verbal confrontation. The employer met with both of them and stated if their behavior continued they would be suspended or discharged from employment.

The claimant has received benefits in the amount of $432.00 for the two weeks ending June 4, 2016.

The employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily left his employment without 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.

Iowa Admin. Code r. 871-24.26(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.

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 from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). 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.

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 Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). “Good cause” for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Florida App. 1973). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

The claimant was frustrated by the work performance of co-workers and rather than bring the situation to the attention of supervisory personnel, he took it upon himself to confront his co-workers and tell them what to do even though he had no management or supervisory authority. When that incident dissolved into a loud argument and the claimant was "on the verge of becoming physical with a 20 year old" he kicked the back door open, went to his car and left instead of waiting for the manager who instructed him to go outside and cool off.

This was not the first confrontation the claimant had with co-workers that required management intervention. He was easily upset by his co-workers and very verbal about his frustrations. The claimant cited numerous complaints about his co-workers and supervisors not performing their jobs to the claimant's expectations. The claimant demonstrated his frustration during the appeal hearing and appears to have a low tolerance for any situation that might reasonably induce a degree of stress or to matters that do not go as exactly as he wishes. A reasonable person, while possibly dissatisfied with the work environment, would not find it intolerable or detrimental within the meaning of the law. The claimant has not established that his leaving was attributable to the employer as that term is defined by Iowa law. Therefore, benefits must be denied.

Iowa Admin. Code r. 871-24.10 provides:

> Employer and employer representative participation in fact-finding interviews.
>
> (1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.
>
> (2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and the employer failed to participate in the fact-finding interview, the claimant is not required to repay the overpayment in the amount of $432.00 for the two weeks ending June 4, 2016. That amount shall be charged to the employer's account.

DECISION:

The June 14, 2016, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was

not eligible for those benefits. The employer did not participate in the fact-finding interview within the meaning of the law. Therefore, the claimant is not required to repay the benefits he received and the overpayment, in the amount of $432.00 for the two weeks ending June 4, 2016, shall be charged to the employer's account.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/pjs