

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TED R KRANZLER
Claimant

APPEAL NO. 09A-UI-11061-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINEGARD COMPANY
Employer

OC: 06/07/09
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

Winegard Company filed a timely appeal from a representative's decision dated July 29, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits finding that the claimant was forced to resign by the employer's mandatory retirement policy concluding that the claimant's quitting was caused by the employer. After due notice, a telephone conference hearing was scheduled for and held on August 18, 2009. Mr. Kranzler participated personally. The employer participated by Ms. Millissa Rodgers, Representative, and witnesses Denise Baker and Don Kerr.

ISSUE:

The issue is whether the claimant voluntarily quit employment with good cause attributable to the employer and whether the claimant has been overpaid job insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: Ted Kranzler was employed by Winegard Company from August 27, 1983 until October 6, 2008 when he voluntarily left employment. Mr. Kranzler worked as a full-time maintenance worker and was paid by salary. His immediate supervisor was Don Kerr.

Mr. Kranzler elected to retire from his employment with Winegard Company after being informed that he would be required to begin working on the company's night shift. The company needed a maintenance worker with electrical experience on that shift for business reasons. Although Mr. Kranzler had worked the night shift in the past, he did not desire to do so again and indicated that he would retire from employment rather than accept the change.

The parties agreed that Mr. Kranzler could remain on the day shift until his voluntary retirement at the end of the year. Later when the claimant was asked about completing paperwork, Mr. Kranzler elected to leave on October 6, 2008 while retirement continued to be available to him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant voluntarily left employment without 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.

The evidence in the record establishes that Mr. Kranzler elected to take retirement rather than to accept a transfer to the company's second shift. Mr. Kranzler had worked on the second shift in the past and was aware that under company policy the employer could transfer employees to the shift or position where their skills were required. The evidence in the record establishes the claimant was not required to take retirement by any type of mandatory retirement policy but that Mr. Kranzler elected to take retirement rather than to accept the second shift work that was available to him. The evidence in the record establishes that Mr. Kranzler had the job skills that the employer needed on this shift and that the claimant could have bid back in to the company's day shift in the future when additional workers were hired.

Mr. Kranzler offered to retire at the "end of the year" if he was allowed to remain on the day shift and the employer agreed. Subsequently the claimant moved his retirement ahead to October 6, 2008 and left employment at that time voluntarily. Work continued to be available to the claimant had he chose to accept the reasonable alternative offered by the employer. The claimant for personal reasons chose to take retirement. Benefits are denied.

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 July 29, 2009, reference 01, is reversed. Ted Kranzler is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount. The issue of whether the claimant must repay the unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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