

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN PAGAN
Claimant

APPEAL NO: 10A-UI-14474-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 10-03-10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 22, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on December 1, 2010. The claimant participated in the hearing with sign language interpreter, Bill Ainsley. Brenda Clouse, Human Resources Business Partner; David Walker, Manager of Food and Nutrition at Mercy West Lakes Hospital; and Russell Moore, Director of Food and Nutrition Department, participated in the hearing on behalf of the employer. Claimant's Exhibit A and Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left his employment with 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 cook for Mercy Hospital from February 7, 2005 to October 1, 2010. He started working at Mercy West Lakes Hospital in September 2009. The claimant worked from 5:30 a.m. to 2:00 p.m. and usually had every other Monday off after moving to West Lakes. During the first week of September 2010, David Walker, Manager of Food and Nutrition at Mercy West Lakes Hospital, posted a note on the bulletin board with the schedule for the week beginning Sunday, September 26, 2010 (Employer's Exhibit One and Claimant's Exhibit A). The note indicated employees should carefully review their schedules because their days off may have changed so the employer could meet its daily staffing needs as it was in a hiring freeze and could not post any open positions at that time (Employer's Exhibit One). On Friday, September 17, 2010, the claimant received a verbal warning for failure to properly report his absence (Employer's Exhibit Three). The claimant was not there when Mr. Walker arrived and Mr. Walker called the claimant who said he was not coming in that day. He told Mr. Walker he tried to call him as well as the operator and another supervisor but Mr. Walker did not receive a call from the claimant and the other two employees had no documentation of a call from the claimant. On Sunday, September 26, 2010, the claimant left a

note for Mr. Walker stating he was off Monday, September 27, 2010, and asking him to change the staff schedule (Employer's Exhibit Two). The claimant had not previously requested that day off. Mr. Walker scheduled him September 27, 2010, due to business needs and his days off that week were Tuesday, September 28, 2010, and Saturday, October 2, 2010. Mr. Walker did not work weekends and consequently did not receive the claimant's note until he arrived for work September 27, 2010. After reading the note Mr. Walker contacted human resources and his direct supervisor, Russell Moore, Director of the Food and Nutrition Department. After discussing the situation the employer decided to issue the claimant a written warning (Employer's Exhibit Three). The employer prepared the written warning September 27, 2010, but did not present it to the claimant until October 1, 2010 (Employer's Exhibit Three). The claimant signed the warning (Employer's Exhibit Three). Sign language interpreters were present when the claimant received the verbal and written warnings. After completing his shift and receiving the written warning October 1, 2010, the claimant left his identification badge and wrote a note for Ron Muecke, Vice-President of Facility Services, at 2:30 p.m. stating he was not happy about the meeting with Mr. Walker and Mr. Moore regarding the written warning and he was quitting effective immediately (Employer's Exhibit Four).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his 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.

871 IAC 24.25(28) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

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). "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). 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. While the claimant was upset that he did not get his usual Monday off September 27, 2010, the employer had written and posted a note with the schedule approximately three weeks earlier notifying employees to check their schedules carefully because it had to change some days off due to business needs caused by a hiring freeze. The claimant waited until Sunday, September 26, 2010, when he knew Mr. Walker was not working, and left a note for him stating he was off September 27, 2010, and directing him to change the staff schedule. He was also scheduled Monday, October 4, 2010. The claimant did not show up for work September 27, 2010, and quit after receiving the written warning October 1, 2010, because he did not think the warning was fair and did not agree with the way he was being scheduled. He did not lose a day off; the employer merely moved his day off to Tuesday, September 28 and October 5, 2010. He was also given Saturday, October 2, 2010, as his second day off that first week. It was not unreasonable for the employer to change his regularly scheduled day off because of business needs and the hiring freeze and the claimant was never guaranteed he would always have Mondays off. Additionally, the employer posted the schedule and the notice about possible changes to days off approximately three weeks earlier and the professional and responsible reaction by the claimant would have been to talk to Mr. Walker at the time his schedule was posted rather than waiting until the day before he planned to not show up to leave the note for Mr. Walker on Mr. Walker's day off, leaving the employer with virtually no time to secure a replacement for the claimant. Consequently, the administrative law judge concludes the claimant quit because he was reprimanded and because his two Mondays off were changed on the schedule covering September 26, 2010 to October 9, 2010. Those reasons do not constitute a good cause reason attributable to the employer for the claimant's leaving. Therefore, benefits are denied.

DECISION:

The October 22, 2010, reference 01, decision is affirmed. 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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