

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD M POLZIN

Claimant

APPEAL NO: 12A-UI-10562-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

STEVEN R WILSON

Employer

OC: 12/18/11

Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit

871 IAC 24.25(21) – Dissatisfaction of the Work Environment

Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated August 24, 2012, reference 06, that held the claimant voluntarily quit employment with good cause on April 4, 2012, and benefits are allowed. A telephone hearing was held on September 27, 2012. The claimant, and witness/former employee, Lauren Witman, participated. Steven Wilson, Owner, and Rose Wilson, Owner/Manager, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on October 19, 2010, and last worked as a part-time cook on April 4, 2012. Claimant left a note on April 4 for supervisor Marisa Grimm that he was quitting because he heard what the owner said about him when he left work sick and how he was treated. He stated he would bring in his shirts when he received his last check.

Claimant admits he has been a recovering alcoholic for the past 3 ½ to 4 years. The employer testimony and evidence is replete with references to his alcoholism. He was a good worker when sober but sick and a complainer when he drank. Claimant believes there was only one occasion where he relapsed during his employment. The employer acknowledges claimant never reported to work after he had been drinking.

Claimant became ill at work on or about April 1. A shift supervisor called owner Wilson into work to help-out. When he came in, he saw claimant standing in an area away from the kitchen and told him to get back to work. Wilson was not aware claimant was ill and wanted to leave. There was an exchange of unpleasant words between them, and claimant left work.

Claimant came back and worked another shift prior to leaving the note he was quitting. Although he had been talking about quitting for a three-week period up to submitting his resignation note, he did not approach management about how he was being treated. The employer had issued corrective action discipline to claimant up to February 25, 2012 for missing work. He had been given a final warning in November 2011.

Claimant did not file an additional claim seeking unemployment until August 5, 2012. He has received benefits on this claim.

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 24.25(21) 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:

- (21) The claimant left because of dissatisfaction with the work environment.

The administrative law judge concludes that the claimant voluntarily quit employment without good cause attributable to the employer on April 4, 2012 due to job dissatisfaction. While the employer might have treated claimant with less than kind consideration, it does not rise to the level of detrimental working conditions that is a good cause attributable to the employer for quitting.

It appears the employer had developed a low tolerance level for claimant missing work based on written warnings. A reasonable inference is the employer owner was not in a good mood when he was called in to work and saw claimant not working. He did not know claimant had become ill and was preparing to leave. This circumstance caused an unpleasant exchange of words but claimant was not discharged by the owner. While claimant characterizes this incident as to what prompted him to quit, he did come back and work another shift before giving his resignation note. In addition, claimant waited four months to file and seek unemployment from this separation that is not compelling evidence he believed he had a good cause for quitting. It is difficult to disregard the degree of employer discipline issued to claimant as to how this might have caused him to consider this as part of the ill treatment that led him to quit.

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.

Since claimant has been receiving benefits prior to the disqualification imposed in this matter, the overpayment issue is remanded to claims for a decision.

DECISION:

The department decision dated August 24, 2012, reference 06, is reversed. The claimant voluntarily quit without good cause attributable to the employer on April 4, 2012. Benefits are denied until the claimant has worked in and is paid wages for insured work, equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs