

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN J GIRMAN
Claimant

APPEAL NO. 11A-UI-12306-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREEN BUICK GMC INC
Employer

**OC: 10/24/11
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Stephen J. Girman filed a timely appeal from an unemployment insurance decision dated September 12, 2011, reference 04, that disqualified him for benefits. After due notice was issued, a hearing was held in Davenport, Iowa on October 25, 2011 with Mr. Girman participating and being represented by Steven Stickle, Attorney at Law. Sammy Hockings testified on his behalf. General Manager Eric Dressing and Sales Manager Chad Dressing participated for the employer, Green Buick GMC, Inc. Employer Exhibits One through Four were admitted into evidence.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

FINDINGS OF FACT:

Stephen J. Girman was employed as a salesperson by Green Buick GMC, Inc. from March 1, 2011 until he resigned June 27, 2011. He resigned for several reasons. At the time he resigned he told General Manager Eric Dressing that he was resigning because of low sales and low income. Mr. Girman also resigned because of sexual innuendos made by his supervisor, Chad Ingerson and by other employees. These comments concerned Mr. Girman's sexual orientation. At least one customer overheard a comment made by Mr. Ingerson. Sales Manager Chad Dressing was aware of Mr. Girman's sexual orientation because of statements made by other employees. These comments caused great distress to Mr. Girman. He complained of the comments to Mr. Ingerson and others in management. Despite this, the comments continued.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant left work with good cause attributable to the employer. It does.

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.

An individual may receive unemployment insurance benefits if the individual has resigned because of intolerable or detrimental working conditions. See 871 IAC 24.26(4). Mr. Girman's testimony was corroborated by his witness. Further, one of the employer witnesses testified that he knew of Mr. Girman's sexual orientation because of statements made by Mr. Girman's coworkers. The employer provided testimony and documentary evidence of the number of days of work Mr. Girman missed, and it did not counter his testimony as to the reason for those absences.

Both employer witnesses were adamant in their testimony that Mr. Girman had not complained to them of the conduct. It was not necessary that he do so. In the case Hy-Vee v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2000), the Supreme Court of Iowa ruled that a claimant need not bring intolerable or detrimental working conditions to the employer's attention as a prerequisite to receiving unemployment insurance benefits.

While the evidence does not establish that Mr. Girman's low sales and low earnings were the result of the intolerable and detrimental working conditions, other evidence establishes that they existed. Benefits are allowed.

DECISION:

The unemployment insurance decision dated September 12, 2011, reference 04, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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