

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TIMOTHY L EBBERS
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SKYLINE CENTER INC
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Appeal Number: 05A-UI-03488-JT
OC: 03/06/05 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) - Voluntary Quit

STATEMENT OF THE CASE:

Skyline Center, Inc. filed a timely appeal from the March 24, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 11, 2005 at the Workforce Development Center in Davenport. Mr. Ebbers participated in the hearing and was represented by attorney David Pillars. Mr. Pillars presented additional testimony through witnesses David Zimmer's and Ian Davis. Lisa Hammond, Human Resources Director, represented Skyline Center, Inc., and presented additional testimony through Amber Fuller, Team Lead. Exhibits One through Six were received in the evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Timothy L. Ebbers was employed by Skyline Center, Inc. (Skyline) as a full-time Direct Care Manager from April 28, 2004 until March 9, 2005, when he voluntarily quit due to intolerable circumstances.

Skyline provides services to individuals with disabilities. Mr. Ebbers' duties involved him providing services to consumers in their home.

Mr. Ebbers was supposed to receive his work schedule in the mail. A schedule was not posted at the workplace. It was his immediate supervisor's duty to place his schedule in an envelope addressed to him and place it in Skyline's outbox so that it could be mailed to him in a timely fashion. The schedule would cover a two-week period of employment. Mr. Ebbers routinely received his schedule after the first date covered by the schedule. This was a source of ongoing frustration for Mr. Ebbers. Frustration with late receipt of work schedules was apparently not unique to Mr. Ebbers. Mr. Ebbers did not want to miss shifts. Mr. Ebbers also wanted to be able to plan the rest of his schedule around his schedule at Skyline. Mr. Ebbers worked part-time as a massage therapist and scheduled appointments around his Skyline work schedule. Despite the fact that Mr. Ebbers had discussed his concerns about the late receipt of the schedule with several Team Leads, the situation did not improve. Mr. Ebbers brought his concerns to the attention of Lynn Hargrave, who was apparently second in command at Skyline.

On December 12, 2004, Team Lead Amber Fuller became Mr. Ebbers' immediate supervisor. Mr. Ebbers discussed with Ms. Fuller his concerns about late receipt of his work schedule on two or three occasions, including a discussion three or four weeks prior to his separation from the employment. Mr. Ebbers may have inappropriately expressed his frustration during that conversation.

Mr. Ebbers was off work from February 28 through March 7 due to illness, and had provided a doctor's note to the employer that indicated he was released to return to work on March 8. This date was included in the work schedule that covered the period of March 6-19. Ms. Fuller was off work from February 22 until March 1, and did not have any contact with Mr. Ebbers between February 18 and March 8. Mr. Ebbers did not receive a work schedule for two-week period of March 6-19. Beginning on March 6, Mr. Ebbers attempted to make contact with the employer to learn his work schedule. Mr. Ebbers left messages with the employer at different phone numbers, but did not receive a response. Mr. Ebbers does not have voicemail on his home telephone or his cellular-phone, and this may have hindered his ability to receive a response from the employer, if any was attempted.

Shortly after 11:00 a.m. on March 8, Ms. Fuller received a message that Mr. Ebbers had failed to appear for a shift that was scheduled to begin at 11:00 a.m. Ms. Fuller attempted to contact Mr. Ebbers about the missed shift.

Mr. Ebbers and Ms. Fuller made contact with one another during the evening on March 8, at which time Mr. Ebbers again expressed frustration about not receiving his work schedule and Ms. Fuller advised him that he had missed a schedule shift. It was not a pleasant conversation for either participant. Ms. Fuller indicated that Mr. Ebbers needed to meet with her the next morning, ostensibly to re-complete progress notes he had previously redone. Mr. Ebbers was frustrated at the request that he yet again redo paperwork and that Ms. Fuller wanted him to travel significant distance to work for a short period of time. In addition, Mr. Ebbers indicated to

Ms. Fuller that when he had not heard from the employer with regard to his current work schedule, he had scheduled a massage therapy appointment for the next morning and could not cancel the appointment. Ms. Fuller asked Mr. Ebbers whether he was quitting. Mr. Ebbers either replied that he was "done" or that he was done dealing with Ms. Fuller. Either way, Mr. Ebbers clearly expressed the fact that he was fed up not only with Ms. Fuller, but also with Skyline over the issue of receding his work schedule. Ms. Fuller noted the conversation in the log she kept for the on-call team lead. The employer made no additional attempt to contact Mr. Ebbers. Mr. Ebbers made no additional attempt to contact the employer.

The employer has a "Fair Treatment Policy" that is set forth in the employee handbook, a copy of which Mr. Ebbers received on July 21, 2004. Policy indicates that most of the employee's concerns are to be addressed with the immediate supervisor. The policy involves additional steps that the employee must initiate through a written complaint. The procedure calls for a total of five steps. For each of steps two through five, the employee must submit or resubmit a written complaint. Mr. Ebbers did not utilize this procedure.

REASONING AND CONCLUSIONS OF LAW:

The weight of the evidence indicates that Mr. Ebbers quit the employment and was not discharged. The question for the administrative law judge is whether Mr. Ebbers' quit was for 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.

Since Mr. Ebbers quit the employment, he has the burden of proving that the quit 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 24.25(4). However, before such a quit will be considered for good cause attributable to the employer, the evidence must show that before the claimant resigned (1) the employer was on notice of the condition, (2) the employer was on notice that the claimant might quit if the condition was not addressed, and (3) the employer had a reasonable opportunity to address the claimant's legitimate concerns. See Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993); Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993); and Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996). An equally important 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).

The evidence in the record establishes that the employer's failure to provide Mr. Ebbers with a work schedule in a timely fashion, in the context of all attending circumstances and the duration of the problem, created an intolerable working condition. It was not unreasonable for Mr. Ebbers to expect to receive his work schedule prior to the first shift covered by the schedule and far enough in advance that he could plan his other activities around that schedule. The employer was well aware, either through Ms. Fuller or others, of Mr. Ebbers concern and level of frustration with the employer's failure to appropriately address that concern. The

administrative law judge has reviewed the employer's "Fair Treatment Policy" and concludes that the policy imposes unreasonable burdens on employees and impediments to effectively dealing with the immediate concerns of an employee in Mr. Ebbers' circumstances. Based on the evidence in the record, the administrative law judge concludes that a reasonable person would have quit the employment under the circumstances. Mr. Ebbers' quit was for good cause attributable to the employer. Accordingly, Mr. Ebbers is eligible for benefits, provided he meets all other eligibility requirements.

DECISION:

The Agency representative's March 24, 2005, reference 01, decision is affirmed. The claimant voluntarily left his employment with good cause attributable to the employer. Claimant is eligible for benefits, provided he may all other eligibility requirements.

jt/sc