

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

STEVEN W BAKER  
3812 – 39<sup>TH</sup> ST  
DES MOINES IA 50310

ING LIFE INSURANCE AND ANNUITY  
5780 POWERS FERRY RD NW  
ATLANTA GA 30327

Appeal Number: 04A-UI-05961-R  
OC: 04-25-04 R: 02  
Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting  
Section 96.4-3 - Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Steven W. Baker, filed a timely appeal from an unemployment insurance decision dated May 21, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, an in-person hearing was held in Des Moines, Iowa on June 21, 2004, with the claimant participating. The employer, ING Life Insurance and Annuity, did not participate in the hearing because the employer did not appear for the in-person hearing as instructed in the notice of appeal and in-person hearing. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Claimant's Exhibit A was admitted into evidence.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Claimant's Exhibit A, the administrative law judge finds: The claimant was employed by the employer as a full-time customer service representative from January 2002 until he voluntarily quit on April 15, 2004. On April 5, 2004, the claimant submitted a written resignation to be effective April 16, 2004. When the claimant realized that that would be starting a new pay period, he and the employer agreed to make his resignation effective April 15, 2004, the end of a pay period. The claimant quit because of a performance review on March 12, 2004 which was poor. The employer noted some need for improvements which had been raised previously. The review indicated that the claimant was not meeting his job requirements and he would receive no bonus and no raise. However, the claimant was at the top of his pay scale. The claimant waited to quit until April 5, 2004 to think about what he wanted to do and then decided to quit. The claimant expressed concerns at the end of his review meeting but at no other time in the recent past. The claimant never indicated or announced an intention to quit over his review.

The claimant testified that he also quit because of alleged harassment. Several months after his employment, the claimant learned that he had a diabetes condition along with sleep apnea. There was no evidence that these two conditions were related to his employment. The claimant already had a depression condition for almost three years. This was noted by the claimant's psychiatrist, Dr. Berryhill, as shown at Claimant's Exhibit A. The claimant filed for family and medical leave in September 2003, and this was approved and he was allowed absences. At about that time, however, the employer began to file disciplinary actions against the claimant. The claimant believed that he was being micromanaged. The claimant also testified that he was receiving daily memos concerning improvement needed in his performance from several different managers and supervisors. At one point, the claimant was accused of violating a dress code for wearing clothes he had worn before. The claimant was also told at this time that the employer was thinking about escalating his disciplinary actions. However, the claimant went on a short-term disability leave from mid September to mid December. When the claimant returned to work, the harassment that he had complained about stopped. The claimant had expressed concerns about his harassment during the period of time that it was occurring. His working conditions were then acceptable until his performance review on March 12, 2004. The claimant has no more recent statement from a physician or psychiatrist than Claimant's Exhibit A on November 18, 2003.

The claimant has placed no restrictions on his ability to work other than he cannot stand for long periods. The claimant has placed no restrictions on his availability for work and he is earnestly and actively seeking work.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because he is and was at relevant times hereto not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for those reasons.

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 24.26(2), (3), (4), (1) provide:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(2) The claimant left due to unsafe working conditions.

(3) The claimant left due to unlawful working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

871 IAC 24.26(6)b, (6)a provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

871 IAC 24.25(13), (28) provide:

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.

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

(28) The claimant left after being reprimanded.

The claimant concedes that he left his employment voluntarily. The issue then becomes whether the claimant left his employment with good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant testified that he left his employment because of health conditions and because of harassment and because of a recent poor evaluation. Concerning his health conditions, the evidence establishes that the claimant had a depression condition for approximately three years prior to his separation and before he was employed by the employer. Several months after his employment began, he discovered that he had diabetes and sleep apnea. There is no competent medical evidence that these two conditions were related to his employment. The administrative law judge also concludes that there is not competent medical evidence that the claimant's depression is solely related to his job. The administrative law judge notes that the psychiatrist's statement at Claimant's Exhibit A indicates the claimant suffered from depression prior to going to work for the employer. There is also no competent medical evidence indicating that the claimant was required by his psychiatrist or his physician to leave his employment. The claimant provided no other statements by physicians or psychiatrists after November 18, 2005. The claimant did testify as discussed below that he believed he was harassed and this added to his depression. However, the administrative law judge is not convinced that the claimant's treatment would reasonably exacerbate his depression although his psychiatrist says in the claimant's case it did. There is also no evidence that the claimant ever informed the employer that he intended to quit unless problems at work were corrected or accommodated and there is no evidence that the claimant ever requested any real accommodation. There is some evidence that the claimant expressed concerns to the employer about his working conditions but even the claimant concedes that his working conditions improved when he returned to work in December 2003 after being on a

medical leave and he did not quit until April 15, 2004. There is no evidence that the claimant has returned to the employer and offered to go back to work. Accordingly, the administrative law judge concludes that the claimant does not meet the necessary requirements for unemployment insurance benefits related either to an employment related illness separation or a non-employment related illness separation.

The claimant testified that he was harassed at work beginning on or before September 2003 when he filed for FMLA leave and when he began having problems with his health conditions as noted above. The claimant described his harassment as disciplinary actions for paperwork errors and being micromanaged by several different managers. The claimant also testified that he received memos almost daily about the need for performance improvement. The claimant also testified that he was accused of a dress code violation for wearing clothes he had worn previously without being so accused. The claimant also testified that he was told that the employer was thinking about escalating his disciplinary actions. The administrative law judge is not convinced that these matters alone sufficiently establish that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental. Finally, and most compelling, the claimant testified that when he returned to work in December 2003 after a disability leave, his treatment and his alleged harassment ceased and his working conditions were acceptable for the four months prior to his voluntary quit effective April 15, 2004 except for a poor performance review. Because of the improvement in the claimant's working conditions, the administrative law judge does not believe that the claimant's quit was actually because of the harassment that he had received or his medical conditions as noted above. Rather, the administrative law judge concludes that the claimant quit because of his poor performance review.

The claimant testified that he received a poor performance review on March 12, 2004 indicating that he was being placed back on improvement for certain performance matters and indicated that he was not meeting his job requirements and he would not get a bonus or a raise. There is no evidence that the claimant was forced to quit and the administrative law judge notes that even after the performance review the claimant did not submit his resignation for almost a month thereafter. If the claimant's working conditions were truly intolerable or detrimental as a result of the performance review or other matters, he would have quit much sooner. The administrative law judge is constrained to conclude that the claimant's poor performance evaluation was really more in the nature of a reprimand and quitting work because of a reprimand is not good cause attributable to the employer. The claimant also received no bonus or raise but there is no evidence that the claimant was ever promised any such bonus or raise and even the claimant conceded that he was at the top of his pay scale. Leaving work voluntarily because of dissatisfaction with wages but knowing the rate of pay is not good cause attributable to the employer. Finally, there is no evidence that the claimant ever indicated or announced an intention to quit at any time and including and especially after the poor performance review on March 12, 2004.

In summary, and for all the reasons set out above, the administrative law judge is constrained to conclude that the claimant left his employment voluntarily without good cause attributable to the employer, and, as a consequence, he is disqualified to receive unemployment insurance benefits. The administrative law judge is not without some sympathy for the claimant but must conclude here that the claimant's quit was not appropriately attributable to the employer. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant has the burden of proof to show that he is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead vs. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that he is and was at material times hereto able, available, and earnestly and actively seeking work. The claimant testified that he has placed no restrictions on his ability to work other than he cannot stand for long periods of time. The claimant testified that his job with the employer here allowed him to sit and met his restrictions. Accordingly, the administrative law judge concludes that the claimant's restriction to avoid standing on his feet for long periods does not unreasonably impede the claimant's opportunity for employment. The claimant also testified that he has placed no restrictions on his availability for work and is earnestly and actively seeking work. In the absence of any evidence to the contrary, the administrative law judge concludes that the claimant is able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits for that reason. However, as noted above, the claimant is disqualified to receive unemployment insurance benefits because he left his employment voluntarily without good cause attributable to the employer.

#### DECISION:

The representative's decision of May 21, 2004, reference 01, is affirmed. The claimant, Steven W. Baker, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer. The claimant is able, available, and earnestly and actively seeking work.

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