IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHAEL D JOLIN
Claimant

BURGER KING
Employer

APPEAL NO. 09A-UI-05077-DWT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 03/01/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Michael D. Jolin (claimant) appealed a representative's March 25, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Burger King (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 28, 2009. The claimant participated in the hearing with his representative, Richard Sturgeon. Shennan Saltzman, the owner, testified on the employer's behalf. Jim Martinson and Jim Willems were available to testify. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 17, 2008. The employer hired the claimant as a full-time maintenance employee to maintain six different locations. The last day the claimant worked for the employer was February 3, 2009. On February 6, the claimant went to his vehicle to go to work and had a seizure. The claimant was hospitalized for six days. The claimant or his parents kept the employer informed while the claimant was hospitalized. The claimant was released from the hospital on February 12. On February 13, the claimant went to work and drove the employer's vehicle. Willems talked to the claimant on February 13 and told him he could not work until he provided the employer with a doctor's excuse. During the February 13 conversation, the employer knew the claimant could not drive for six months. The claimant worked three hours before he went home.

When the claimant went to his doctor's appointment on February 19, his doctor indicated he was released to work but was not able to drive for six months. The employer received the doctor's release late Friday afternoon, February 20.

On February 22, the claimant talked to Saltzman about working. They talked about the claimant working eight hours at one store. They also talked about the fact the claimant would have to find someone to drive him to other locations as needed and this person would have to be insurable under the employer's insurance policy. The claimant left the conversation understanding he could not work until he found someone who would be willing to drive him to other locations during his work day. The employer left the discussion with the understanding the claimant would find a ride to the Hamilton store, the employer would have another employee drive the employer's vehicle to that location, and the employer would see how it worked with the claimant just working at one location for eight hours a day. The employer expected the claimant to make arrangement with someone who could drive the employer's vehicle to another location if another store needed the claimant's services.

The employer had another employee drive the maintenance vehicle to the Hamilton location on February 23. After employees reported the claimant had not reported to work on February 23, Saltzman called the claimant to find out why he was not at work. During the discussion, the claimant indicated the arrangement talked about was not going to work for him and he was not going to return to work. The employer understood the claimant had a couple of other job opportunities that would fit his current situation. The claimant brought in the employer's property on February 24.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a.

During the hearing, the claimant and employer presented conflicting testimony. The claimant testified that on February 23, Saltzman indicated that because the claimant could not drive for six months, it would be better for everyone for the claimant to come back in six months when he could drive again and the employer would have a job for him. The employer testified the claimant indicated the arrangement for continuing his employment was not going to work and he had a couple of other opportunities that would work out better for him. After thoroughly reviewing the testimony, I conclude the employer's testimony is more credible than the claimant's testimony. Even though the claimant asserted he did not know he could not drive for six months after he had a seizure, the claimant knew or should have known this would happen if he had another seizure. The claimant may not have wanted to acknowledge he would lose his license for six months because driving was a major part of his work, but I find it unlikely he was not reminded in the hospital that he would lose his license for six months. The claimant's assertion that the employer required him to have a driver stay at the store while the claimant worked is highly unlikely. Even though the claimant's driver did not have to be at the store where the claimant worked, the driver had to be available to drive the claimant and the employer's vehicle to another location if the need arose. It is not known if the claimant's parents were willing or even available to drive the employer's vehicle during the day. The claimant's assertion that the employer told him on February 23 to come back in six months and there would be a job waiting for him is not supported by the employer's action in finding an employee to replace the claimant the next day. Based on the above inconsistencies, the employer's testimony is found more credible than the claimant's testimony. This means on February 23, the claimant informed the employer he had decided he was not going to continue his employment and quit.

When a claimant quits, he has the burden to establish he leaves employment for reasons that qualify him to receive benefits. Iowa Code § 96.6-2. The facts indicate the claimant quit because he did not or could not find anyone who would be available to drive him to another location in the employer's vehicle if another store needed his services. Even though the employer was willing to see if the claimant could work at just one location a day, the claimant did not try this experiment or attempt to work out any other driving arrangement with another employee. On February 23, the claimant quit for compelling reasons. These reasons do not qualify him to receive benefits. As of March 1, 2009, the claimant is not qualified to receive benefits.

DECISION:

The representative's March 25, 2009 decision (reference 01) is affirmed. The claimant voluntarily quit his employment on February 23 for personal reasons that do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of March 1, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

_____
Debra L. Wise
Administrative Law Judge

_____
Decision Dated and Mailed

dlw/kjw