

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN M BECERRA
Claimant

PRIMOS MEXICAN RESTAURANT INC
Employer

APPEAL 16A-UI-08313-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 07/10/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.25(21) – Dissatisfaction with Work Environment
Iowa Admin. Code r. 871-24.25(22) – Personality Conflict with Supervisor

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 26, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit his employment because he disliked his work environment. The parties were properly notified of the hearing. A telephone hearing was held on August 17, 2016. The claimant, Brian M. Becerra, participated. The employer, Primo's Mexican Restaurant, Inc., participated through Travis Taylor, owner.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a general manager, from April 2013 until July 7, 2016, when he quit due to a multitude of issues.

The final issue preceding claimant's decision to quit his employment began on June 30, when he contracted poison ivy. Claimant contacted Taylor and reported that he had a serious case of poison ivy and would not be at work. Taylor told him that this news "sucks" and said the restaurant would suffer in his absence. Claimant sent Taylor a message after this initial conversation and told him that he had a doctor's note excusing him from work. Taylor never responded to this message. Claimant testified that he believed he deserved better than this, so on July 5, he quit his employment. Claimant also testified that he assumed he had been discharged, as Taylor had not responded to his message about having a doctor's note. Taylor testified that claimant told him he believed he was discharged. Taylor responded in part, "I don't know why you would say you're not employed at Primo's anymore."

Claimant also testified that he quit due to health and safety concerns, a copyright issue, problems with I-9 paperwork, and other issues. Claimant testified these were ongoing issues

during his employment. Both claimant and Taylor testified about these issues and claimant's level of responsibility for them, if any.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from employment was without good cause attributable to the employer. Benefits are withheld.

As an initial matter, the administrative law judge determines that claimant was not discharged but voluntarily left his employment. Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

In contrast, Iowa Code §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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984). Here, claimant assumed he was fired. However, he also gave testimony that he quit his job voluntarily. The administrative law judge, after reviewing both claimant's and Taylor's testimony, concludes claimant voluntarily left his employment. Therefore, this case will be examined as a quit and not a discharge.

Iowa Admin. Code r. 871-24.25 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.

(22) The claimant left because of a personality conflict with the supervisor.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). Claimant was unhappy with multiple facets of his position. However, the triggering incident was claimant feeling unappreciated and frustrated with the way in which his employer communicated. The average person in claimant's situation would not depart employment after the employer failed to respond to a text message about absences. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Claimant's decision to quit because he felt unappreciated and disliked the way Taylor ran the business was not a good cause reason attributable to the employer. Benefits are withheld.

DECISION:

The July 26, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/