

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEVI R MEYER

Claimant

APPEAL NO: 12A-UI-03667-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RESULTS CUSTOMER SOLUTIONS LLC

Employer

OC: 02/26/12

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Results Customer Solutions, L.L.C. (employer) appealed a representative's March 30, 2012 decision (reference 01) that concluded Levi R. Meyer (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2012. The claimant participated in the hearing. Jane Robertson appeared on the employer's behalf and presented testimony from one other witness, Kelly Wurm. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on June 6, 2011. As of about January 1, 2012, he worked full-time as a planner/mentor at the employer's Spencer, Iowa call center. His last day of work was February 20, 2012.

On February 20 the claimant was scheduled to work from 12:00 p.m. to 7:00 p.m. He reported for work as scheduled, but after a coworker made some remark which the claimant felt was rude, he became frustrated and upset. He went to his supervisor at about 12:30 p.m. and reported that he was leaving so he could calm down and he did not know if he would be back to work that day. The supervisor did not say anything in response. The claimant proceeded to leave the facility at about 12:45 p.m.

The claimant's supervisor contacted the site director, Wurm, and reported that the claimant had left and indicated he might not be returning. Wurm then called the claimant, leaving him a

message at about 1:00 p.m. that he needed to call her. He called her back about 10 to 15 minutes later. She began to tell him that she needed him to come back and finish his shift, stating that it was unacceptable for person who was in management, as the claimant now was, to walk out as the claimant had done. During the call, the claimant's phone dropped the call. Wurm understood the claimant to have said, "I'll just quit" and believed he had deliberately hung up.

Later that afternoon, the claimant did try to call back, but Wurm was in a meeting, so he left a message with another employee. Wurm did attempt to call him back again yet later that afternoon, but did not leave a message. The claimant did not call or report back in for work as scheduled the next day or thereafter, as he assumed that when Wurm told him that his leaving was "unacceptable" and that she "can't tolerate" that conduct, that she was going to discharge him. However, the employer had not made a decision to discharge the claimant; the normal procedure in such situations would be for the subject employee to be given a formal warning and potentially be demoted. The claimant did come into the facility on February 27 to pick up a paycheck, but he did not seek out Wurm or his immediate supervisor to discuss what had happened or learn what his status might be.

The claimant established a claim for unemployment insurance benefits effective February 26, 2012. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that his separation was not "voluntary," as he had not desired to end the employment; he argues that it was the employer's action or inaction of saying that his departure on February 20 was "unacceptable" and that the employer "can't tolerate" such conduct meant that he was being discharged, therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as where an employee believes he is or has been discharged but has not been directly and specifically told that he is discharged. 871 IAC 24.25(33).

The claimant failed to return to work even though he had not been clearly told he was discharged; he knew it was his phone that had cut out on the call he was on with Wurm, but did not take all possible actions to ensure that he had remedied the communication issue and clarified his employment status because he simply assumed he was being discharged; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2.

Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with coworkers is not good cause. 871 IAC 24.25(6), (21). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's March 30, 2012 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of February 20, 2012, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw