

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES M JANIC**  
Claimant

**APPEAL NO. 07A-UI-07088-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GREGORY MFG CO**  
Employer

**OC: 06/24/07 R: 04  
Claimant: Appellant (2)**

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated July 13, 2007, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on August 6, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Lewis Worden participated in the hearing on behalf of the employer.

**ISSUE:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant worked full time as a welder for the employer from July 11, 2005, to June 20, 2007. The claimant was on Family and Medical Leave Act (FMLA) leave from April 2, 2007, to May 14, 2007, due to the birth of his child. His immediate supervisor was Tim Schmidt.

When the claimant returned to work, he felt he was being punished for taking the time off. He was not returned to his original job as a welder but instead was assigned to work as a forklift operator. The job was in the same department and offered the same hours and pay, but his work duties were different. When he asked about a raise, Schmidt responded, "Do you think you deserve a raise?" Schmidt then referenced the fact that all the other workers were working in the heat while the claimant was at home. The claimant actually was not due for a raise until July 2007, but Schmidt made a clear that he would not get one.

On June 20, 2007, Schmidt called the claimant into his office and gave him a warning for alleged excessive absenteeism. In the warning, the first week of the claimant's FMLA leave was listed as unexcused absence. The claimant had not had a problem with his attendance since he returned to work after his FMLA leave. He considered Schmidt's actions to be retaliation for taking FMLA and was concerned about that Schmidt would do next. He informed Schmidt that he was quitting because he was tired of how Schmidt was treating him, which he considered unfair. The claimant then left work at about the middle of his shift.

Later that date Schmidt called the claimant and told the claimant that he would tear up the warning if the claimant returned to work. The claimant told Schmidt he was not going to return to work because of the mistreatment.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant voluntarily quit employment without 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.

871 IAC 24.26(3) 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:

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

Under the Family and Medical Leave Act (FMLA) (29 USC § 2601 et seq.) any eligible employee who takes leave is entitled to be restored by the employer to the position of employment held by the employee when the leave commenced or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. 29 USC § 2614(a). In addition, the taking of leave shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. 29 USC § 2614(b). Finally, it is unlawful for any employer to interfere with, restrain, or deny the exercise of the rights provided under the FMLA.

In this case, the claimant voluntarily quit employment with good cause attributable to the employer because Schmidt had interfered with the claimant's rights under the FMLA by indicating that he did not deserve a raise because he had taken FMLA and disciplined him for taking FMLA. The evidence does not establish the forklift driver position was not an equivalent position so that would not have provided cause to leave employment. It appears that after the claimant quit, Schmidt realized that the discipline issued to the claimant was improper since he offered to tear it up and the discipline was not in the claimant's personnel file. The claimant was justified in believing that Schmidt was punishing him for taking FMLA.

**DECISION:**

The unemployment insurance decision dated July 13, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css