

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

ANDREAS GARTLAND
428 STONE HAVEN DR APT 15
AMES IA 50010

STATE OF THE ARCH INC
GOODFEET STORE
11102 W NATIONAL AVE
WEST ALLIS WI 53227

Appeal Number: 05A-UI-02839-JTT
OC: 06/27/04 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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Andreas Gartland filed a timely appeal from the March 10, 2005, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on April 5, 2005. Mr. Garland participated in the hearing. The employer participated through Amie Dettmann, Vice President.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Andreas Gartland was employed by the GoodFeet store as a full-time commission sales person from November 16, 2004 until February 2, 2005, when he voluntarily quit. The employer markets arch supports to the general public through retail outlets.

Mr. Gartland's quit was prompted by three things. First, Mr. Gartland thought his manager had stolen a sale and \$38.00 commission from him the morning of February 2, while Mr. Gartland was processing another sale. Mr. Gartland had never before observed his manager engage in such behavior. Second, Mr. Gartland's manager was about to issue him a written reprimand for unethical sales tactics. At a company meeting held at the beginning of the year, the employer had emphasized the need to avoid crossing the line into unethical conduct in the course of making a sale. On February 2, Mr. Gartland overheard his manager on the telephone discussing the fact that he was going to issue a written reprimand to Mr. Gartland for pointing to a customer's foot as if he were diagnosing the customer and for telling the customer that he used the product and it worked for him. Third, Mr. Gartland was being scrutinized by the employer with regard to a missing bank deposit.

After the manager took over Mr. Gartland's sale, Mr. Gartland confronted the manager about the incident. Mr. Gartland then advised the manager that he was giving his two-week notice of his intention to quit. Mr. Gartland then called the corporate office and left a voice message in the voice mailbox of Amy Schmeling. Ms. Schmeling is the assistant to Amie Dettman, Vice President. Mr. Gartland also managed to get a data entry person on the telephone at the corporate office and spoke to that person about his situation. Mr. Gartland then contacted the regional manager, Pamela Sullivan. In the course of discussing the matter with Ms. Sullivan, Mr. Gartland uttered the statement, "You listen here, missy." Ms. Sullivan proceeded to terminate Mr. Gartland's employment effective immediately.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's voluntarily quit of the employment was not for good cause attributable to the employer.

A claimant who voluntarily quits employment is disqualified for benefits unless the quit was for good cause attributable to the employer. See Iowa Code section 96.5(1). A quit in response to a reprimand is presumed not to be for good cause attributable to the employer. See 871 IAC 24.25(28). A quit due to dissatisfaction with the work environment or a personality conflict with a supervisor is presumed not to be for good cause attributable to the employer. See 871 IAC 24.25(21) and (22). Mr. Gartland's quit was, in part, in response to the reprimand and a personality conflict with his manager. Mr. Gartland is not eligible for benefits in connection with a quit that is based on any of the three above reasons.

In his testimony, Mr. Gartland discounted the notion that his quit was due to being scrutinized by the employer regarding the missing deposit, but the testimony of both parties indicated this was a pending issue at the time of the quit. Mr. Gartland is not eligible for benefits in connection with a quit that is based on this reason.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.25(4). However, before such a quit will be considered for good cause attributable to the employer, the evidence must show that before the claimant resigned (1) the employer was on notice of the condition, (2) the employer was on notice that the claimant might quit if the condition was not addressed, and (3) the employer had a reasonable opportunity to address the claimant's legitimate concerns. See Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993); Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993); and Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996). The test is whether a reasonable person would have quit under the

circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The evidence in the record establishes that on February 2, 2005, Mr. Gartland made the hasty decision that his working conditions were intolerable and that he needed to quit. Mr. Gartland acted on that impulse and advised his manager he was going to quit. Mr. Gartland's quit in response to the manager stepping into a sale was unreasonable. Mr. Gartland had never witnessed any similar behavior from the manager. The manager had concerns about Mr. Gartland's sales tactics that morning that may have prompted him to step into the sale. The second customer was waiting for service while Mr. Gartland attended to the first customer. The reasonable thing for the manager to do would be to serve the waiting customer and resolve any issues regarding the commission later. Mr. Gartland cut that process short. Prior to announcing his resignation, Mr. Gartland provided no forewarning to the manager that the incident regarding the sale would prompt him to quit. He provided the manager with little or no opportunity to resolve any legitimate concerns he might have. The administrative law judge concludes that the circumstances were neither intolerable nor detrimental, and that a reasonable person would not have quit under the circumstances.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Gartland's quit was not for good cause attributable to the employer. Accordingly, Mr. Gartland is disqualified for benefits.

There is the remaining issue of the employer's termination of the employment prior to the expiration of Mr. Gartland's two-week notice period. When an employee gives notice of an intent to resign at a future date and the employer terminates the employee immediately, the employee is eligible for benefits for the period between the actual separation date and the future quit date the employee provided at the time the resignation was tendered. See 871 IAC 24.26(12). Mr. Gartland is entitled to benefits for the period February 2, 2005 to February 16, 2005.

DECISION:

The Agency representative's decision dated March 10, reference 03, is affirmed. The claimant's voluntary quit was without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. However, since the employer terminated the employment two weeks prior to the date the claimant indicated as his final day, the claimant is eligible for benefits for the period of February 2-16, 2005, provided he is otherwise eligible.

jt/pjs