

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMIAH I BOWERS
Claimant

APPEAL NO. 12A-UI-00850-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALBASRI LLC
Employer

OC: 12/04/11
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Albasri, L.L.C., filed a timely appeal from a representative's decision dated January 12, 2012, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on February 16, 2012. Claimant participated personally. The employer participated by Mr. Mohammed Albasri, Company Owner, and Mr. Emad Addalh, Cook.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Jeremiah Bowers was employed by the captioned company d/b/a Petra Falafel House Restaurant from July 6, 2010 until December 2, 2011 when he voluntarily left his employment. Mr. Bowers most recently worked as a part-time cashier averaging approximately 30 hours per week. The claimant was paid by the hour. His immediate supervisor was the company owner, Mohammed Albasri.

Mr. Bowers left his employment with the captioned restaurant after he was unwilling to provide reasonable medical documentation supporting his need to be absent on the dates between November 25 and November 29, 2011.

Mr. Bowers had been authorized to be away from work on Thanksgiving, November 24, 2011. The claimant had traveled to Chicago, Illinois to visit family. Although the claimant was expected to return to work on Friday, the 25th; Saturday, the 26th; and Monday, the 28th, Mr. Bowers did not do so. The claimant instead called or texted his employer indicating that he was unable to return to work due to the "illness of his mother." Prior to the claimant returning from Chicago the company owner requested Mr. Bowers to supply some documentation of any sort that would verify that the claimant's mother had been ill or hospitalized. When the claimant

called on Tuesday morning, November 29, 2011, the company owner reminded Mr. Bowers he had been asked to provide medical documentation. The claimant disconnected. After waiting a few days to determine whether the claimant would return to work and supply the documentation as requested, the employer eventually concluded that Mr. Bowers had relinquished his position with the company when the claimant did not return to work or have further contact with the employer.

Prior to Mr. Bowers leaving for Chicago, the claimant had been served a protection order at work. The protection order was initiated by employees or management of a Subway location adjacent to Mr. Bowers' work location with Albasri, L.L.C. and was apparently related to what was alleged to be harassment of female employees at the Subway location. The employer concluded that the protection order may have also played a part in Mr. Bowers' decision not to return to work. Approximately one and one-half months later, Mr. Bowers returned to the employer's facility to settle a previous overtime pay issue and at that time signed a statement that he had previously quit work with Albasri, L.L.C.

It is Mr. Bowers' position that he was discharged and did not quit his employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge initially is whether the claimant was discharged or whether the claimant voluntarily left employment. Based upon the evidence in the record, the administrative law judge concludes that the claimant chose to voluntarily relinquish his position. The evidence does not establish that the claimant was discharged by the employer.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). An individual who voluntarily leaves their employment must first give notice to the employer of the reason for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993).

In this matter the administrative law judge concludes based upon the totality of the evidence in the record that Mr. Bowers chose to relinquish his position with Albasri, L.L.C. because he was unable or unwilling to supply reasonable documentation supporting his need to be absent between November 25, 2011 and November 29, 2011. The claimant had been given permission to be off work for one day to travel to Chicago but had failed to return indicating the reason for his continuing absence was due to the "illness of his mother." The claimant had been given sufficient time and opportunity to request or supply medical documentation. Mr. Bowers did not go to the employer and indicate that documentation was being delayed or that he was unable to obtain documentation. The claimant instead discontinued reporting to work. Concurrent with the claimant's failure to return to work was the filing of a protection order by the employees or management of an adjacent business based on Mr. Bowers' conduct towards employees or management at the adjacent business location.

The evidence in the record establishes that Mr. Bowers was considered to be a good and valued employee and that the claimant is eligible for rehire. These factors are not consistent with a situation where the employer has chosen to discharge an individual. The administrative law judge finds the employer's testimony to be more credible and so rules. Claimant's employment came to an end when he chose not to return to available work and chose not to provide medical documentation or at least explain why the documentation was not available. The employer's request for medical documentation was reasonable under the circumstances of this case. As the claimant has not established good cause attributable to the employer for quitting, unemployment insurance benefits are withheld.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated January 12, 2012, reference 02, is reversed. Claimant quit employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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