

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AUGUSTUS SULLIVAN
Claimant

HY-VEE INC
Employer

APPEAL NO. 18R-UI-06927-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/15/18
Claimant: Appellant (1)

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 4, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 12, 2018. Claimant participated and had witness Brandon Green. Employer participated by hearing representative Lisa Harroff, and witnesses Don Kuhn and Chad Bulman. Employer's Exhibits 1, 3-7 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked as a restaurant manager for employer in Market Grille. Claimant last worked for employer on April 15, 2018. On that date, claimant was asked to meet with other managers up in the office. Claimant had experienced two other restaurant managers being dismissed over the last couple of days and believed that was why he was being called to the office.

When claimant went to the office, there were two managers there. Claimant was asked to sit down and refused to do so. Employer's witnesses stated that they wanted to hear claimant's side of the story as their investigation seemed to indicate that claimant was giving away alcohol and not charged amounts due on his bar bill. The last, most recent act employer mentioned to claimant was stated to have occurred on April 2, 2018. On that date, claimant was alleged to have given the general manager three beers but only had the general manager pay for one beer.

Employer discovered this action through an audit of video taken at the Market Grille. Employer also discovered that on other occasions in the same timeframe, claimant may not have paid full price when he purchased alcohol. Employer discovered numerous seeming improprieties through the videos and was addressing the questionable acts with each separate employee. When claimant was called up to the office on April 15, 2018, he knew that multiple other

managers had already been terminated for actions surrounding the Market Grille. Employer asked claimant to sit and claimant refused, preferring to stand. Employer asked about the April 2, 2018 incident to get claimant's side of the story. Claimant did not offer an explanation at the time. Claimant stated that this was because he was nervous and did not have a particularized memory of the incident in question. (At the hearing, claimant stated that the general manager told claimant that he had a couple of beers bought for him by a customer earlier in the day and that was why claimant only charged the manager for one beer).

Employer stated that after a back and forth regarding discussing the issues where employer kept requesting to hear claimant's information and claimant refusing to offer any information, employer noticed that claimant was recording the conversation between the parties. When asked about this, employer stated that claimant chose to walk out. Claimant stated that employer terminated him. Employer followed claimant as he left and asked claimant for his keys. All matters were civil. Employer's witness stated that there had been no decision yet on whether to terminate claimant, and that claimant quit his job. Claimant's witness stated that employer announced claimant had been terminated. Employer's two witnesses denied that this occurred.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Initially, the administrative law judge determines that claimant voluntarily quit and was not terminated. This conclusion is reached through a number of circumstances that occurred. Prior to claimant's meeting with employer, claimant knew that other manager's had been terminated for their actions at the Market Grille. Claimant responded entering the room of the meeting by refusing to sit with the managers. Claimant did not offer any explanation when questioned about the incident with the general manager purchasing beer even though it took place less than two weeks before the meeting. These events, and employer questioning claimant's surreptitious use of his phone to record the incident, lead to the administrative law judge's belief that claimant quit after he was caught doing this.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he was upset about being confronted by employer surrounding issues at the Market Grille. Ordinarily "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code Section 96.2. *O'Brien v. EAB* 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the test of good faith." *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "Common sense and prudence must be exercised in evaluating all of the circumstances that led to an employee's quit in order to attribute the cause for the termination." *Id.* The actual circumstances surrounding the event of claimants quit do not amount to sufficient cause to attribute claimant's quit to anything other than claimant's own actions.

DECISION:

The decision of the representative dated May 4, 2018, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn