

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY L BANG

Claimant

APPEAL NO. 12A-UI-03471-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS SCHACHTNER

Employer

OC: 02/05/12

Claimant: Appellant (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Gary Bang, filed an appeal from a decision dated March 29, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 19, 2012. The claimant participated on his own behalf. The employer, Thomas Schachtner, participated by Co-Owners Tom and Diane Schachtner.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Gary Bang was employed by Thomas Schachtner from August 25, 2009 until December 1, 2011 as a part-time delivery driver. He had complained to Co-Owner Thomas Schachtner about the other deliver driver, Ryan, “acting out” when he would be frustrated. Ryan would swear and punch the trailer. None of the bad language or physical blows would be aimed at Mr. Bang. The employer did speak with Ryan on at least two occasions regarding Mr. Bang’s complaint.

Ryan would conduct himself better after being counseled by the employer but on the last occasion admitted his frustration was due to the fact Mr. Bang was “slacking” off. He was not doing his share of the work and Ryan would get frustrated about having to do more than his share. When Mr. Schachtner talked to Mr. Bang about Ryan’s complaint, the claimant merely laughed.

The claimant spoke finally to the employer on Tuesday, November 29, 2011, about another incident of Ryan swearing and punching the trailer. Mr. Schachtner finally said both of the men were adults and should learn to deal with the situation and work it out. The claimant called in absent the next day and on December 1, 2011, called the employer and quit.

REASONING AND CONCLUSIONS OF LAW:

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 24.25(6) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

The claimant quit because he would not get along with Ryan. The co-worker's conduct was undoubtedly annoying but did not constitute any threat to Mr. Bang. The claimant acknowledged Ryan would "settle down" when he told him to do so and go to the truck to calm down. The record establishes the claimant quit without good cause attributable to the employer. Under the provisions of the above Administrative Code section, this is a disqualifying separation and the claimant is disqualified.

DECISION:

The representative's decision of March 29, 2012, reference 01, is affirmed. Gary Bang is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw