

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

MICHAEL E AKERS
2336 E 37TH ST
DES MOINES IA 50317

OZARK AUTOMOTIVE DISTRIBUTORS INC
c/o PAYROLL DEPT
PO BOX 1156
SPRINGFIELD MO 65801-1156

Appeal Number: 05A-UI-08228-DWT
OC: 07/01/05 R: 02
Claimant: Respondent (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:

Ozark Automotive Distributors, Inc. (employer) appealed a representative's August 3, 2005 decision (reference 01) that concluded Michael E. Akers (claimant) was qualified to receive unemployment insurance benefits and the employer's account was subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 29, 2005. The claimant participated in the hearing. Whitney Smith, the human resource coordinator since July 25, 2005, appeared on the employer's behalf. During the hearing, Smith asked an employee, T., if he wanted to participate. He declined. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on June 7, 2004. The claimant worked full time in the order selection department. The claimant's supervisor was P.P. The assistant supervisor was T.

When the claimant accepted employment, he agreed to work the 8:30 a.m.-to-5:30 p.m. shift. In early to mid-June 2005, the claimant started experiencing problems with his supervisor, P.P. The claimant had a tooth break and needed some time off to see a dentist. When the claimant asked P.P. for time off for a dental appointment, P.P. kept putting off the claimant's request. The employer was shorthanded, so P.P. kept denying the claimant's request for time off for medical reasons.. After the claimant went to upper management, the employer gave him time off to go to a dentist.

During this same time frame, P.P. told the claimant he would have to start working the 6:00 a.m. to 2:00 p.m. shift. After the claimant told P.P. he could not work this shift, P.P. told the claimant that if he did not work this shift, he would not have a job. The claimant considered this harassment and reported P.P.'s behavior to H.M., a person in upper level management.

On July 11, when the claimant was in H.M.'s office, P.P. came into the office uninvited. P.P. raised his voice and told the claimant that the claimant knew what was going to happen to him. Even though the claimant felt P.P. threatened him, the employer did nothing about P.P.'s conduct. H.M. did not complete any paperwork concerning the claimant's harassment complaint. The claimant understood that when M., the warehouse manager, returned to work, H.M. would talk to him about the claimant's concerns.

On July 14, 2005, P.P. went to the claimant and started yelling at him. The claimant was not only frustrated, but also felt intimidated by P.P.'s words and actions. P.P. again made the remark that the claimant would be changing to the 6:00 a.m. to 2:00 p.m. shift.

The claimant decided this was the last straw. Even though he had complained about the way P.P. treated him for about a month, the employer did nothing. H.M. did not do or say anything, even when P.P. acted inappropriately toward the claimant in H.M.'s office. The claimant submitted his resignation on July 14, which was effective immediately. The employer understood the claimant resigned because he was not satisfied with management.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause. Iowa Code §96.5-1. The claimant voluntarily quit his employment on July 14, 2005. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant voluntarily quits with good cause when he quits because of a substantial change in the employment relationship, which can include a change in the shift

worked or he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(1) and (4).

The claimant's testimony must be given more weight than the employer's testimony because the employer's witness had no personal information about the claimant's employment. The employer relied solely on hearsay information or on the paperwork in the claimant's file. Based on a preponderance of the credible evidence, the claimant's supervisor started harassing the claimant because he wanted the claimant to work on an earlier shift. Even though the claimant reported problems with his supervisor to an upper management person and this person observed a confrontation between the claimant his supervisor, the employer did nothing. Under the facts as presented during the hearing, the claimant quit his employment because of intolerable working conditions. The claimant established good cause for quitting. Therefore, as of July 10, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 3, 2005 decision (reference 01) is affirmed. The claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. As of July 10, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw