

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

ROBERT H DUNCAN
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DES MOINES IA 50310

AFFORDABLE DENTURES DENTAL
LABORATORIES INC
PO BOX 1042
KINSTON NC 28503-1042

Appeal Number: 06A-UI-00374-DWT
OC: 12/11/05 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:

Robert H. Duncan (claimant) appealed a representative's January 6, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Affordable Dentures Dental Laboratories, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not 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 January 26, 2006. The claimant participated in the hearing. Kirk Midkiff, the upper Midwest regional manager, appeared on the employer's behalf. 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 with his supervisor, H.S., in 1995 when they both worked for Dr. Craven. The employer bought the business from Dr. Craven and became the claimant's employer on October 3, 2003. The claimant continued to work as a full-time technician. H.S. remained the claimant's supervisor.

During the course of his employment, the claimant always considered H.S. to be a very controlling individual who wants everything done his way and gets upset when people change the established practice. The claimant believes H.S. verbally abuses employees, including the claimant. After the employer moved to a new building in March 2005, H.S.'s verbal abuse of others seemed to increase.

During the summer of 2005, the claimant had problems working with H.S. because of the way he treated the claimant and other employees. The claimant did not contact Midkiff because he knew H.S. would become angry if the claimant reported any problems. Instead, the claimant went on a week's vacation so Midkiff came to work at the claimant's job site. The claimant hoped Midkiff would notice problems when he worked with H.S. While Midkiff worked with H.S. in August there were no problems.

On December 6, 2005, H.S. reprimanded the claimant. The claimant and H.S. engaged in a verbal confrontation because H.S. did not want the claimant to bring finished work out to the front before it was scheduled to be done. After H.S. called the claimant a liar, the claimant threatened to hit him. H.S. then backed down for awhile. About an hour later the two men were again bantering back and forth when H.S. called the claimant a dumb ass. The claimant again threatened to hit H.S. if he did not stop making these remarks.

The claimant was so tired of H.S.'s verbal abuse that the claimant decided he had enough and quit on December 6, 2005. The claimant told H.S. he was quitting because of the hostile environment H.S. created. After the claimant went home, he contacted Midkiff and for the first time reported the problems he had with H.S. Midkiff had no idea the claimant felt there was any problem at work. Midkiff did not want the claimant to quit and asked him if he would consider working at the Mason City laboratory. The claimant declined this job because of the distance from his home and because the claimant assumed H.S. would somehow control his work since H.S. is from Mason City. The claimant did not return to work after December 6, 2005.

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. Since the claimant voluntarily quit his employment on December 6, 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 intolerable or detrimental working conditions. 871 IAC 24.26(4). The evidence indicates the

claimant had problems with H.S. for the ten years he worked with him. Even after Midkiff became the regional manager, the claimant failed to let anyone in management know that the claimant felt H.S. made comments that were inappropriate at work and that bothered the claimant. The claimant's expectation that Midkiff would learn how H.S. treated employees when Midkiff worked with H.S. while the claimant was on vacation was wishful thinking. The claimant even acknowledged employees acted differently when Midkiff was present.

The December 6 final straw incident occurred after H.S. reprimanded the claimant and then called the claimant a liar and a dumb ass. H.S.'s comments were inappropriate, unprofessional, rude and totally uncalled for. The claimant's threat to hit him should have put H.S. on notice that the claimant did not appreciate his remarks. Initially, H.S. discontinued his inappropriate comments to the claimant, but about an hour later again made a comment that put the claimant over the edge. The claimant admitted that if H.S. had not made the inappropriate comments that day, the claimant would not have quit.

The claimant established compelling reasons for quitting. The evidence does not, however, establish that the claimant quit for reasons that qualify him to receive unemployment insurance benefits. This was based on the fact the problem with H.S. had been going on ten years, the claimant never reported this problem to management, H.S. reprimanded the claimant the day he quit, and even though the claimant threatened to hit H.S., the claimant did not tell H.S. on December 6 that he would quit if H.S. did not stop making offensive comments about the claimant.

The law presumes a claimant voluntary quits employment when he leaves because of a personality conflict with a supervisor or after he has been reprimanded. 871 IAC 24.25(22)(28). The claimant is not qualified to receive unemployment insurance benefits as of December 11, 2005.

DECISION:

The representative's January 6, 2006 decision (reference 01) is affirmed. The claimant voluntarily quit his employment for personal reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of December 11, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/pjs