

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL W PINEGAR
Claimant

TIMOTHY L SHORE
Employer

APPEAL NO. 12A-UI-14156-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/28/12
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated November 21, 2012, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 3, 2013. The claimant participated personally. The employer participated by Timothy Shore, Owner. Tim Greigo was a witness for the employer. The record consists of the testimony of Michael Pinegar; the testimony of Timothy Shore; and the testimony of Tim Greigo.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer owns a restaurant called Calvin Rockett, which is located in Marshalltown, Iowa. The claimant is a long time employee although this particular restaurant has been in business for the past two years. The claimant was a full-time kitchen manager. He quit his job voluntarily on October 26, 2012.

The claimant quit his job because he was criticized by the employer about his attitude at work. The claimant had made some derogatory remarks about another employee named Allie. Mr. Pinegar decided to speak sternly with the claimant about this matter and because some profanity was used by Mr. Pinegar, the claimant decided there was no reason for him to change his attitude. He picked up his things and left.

The employer has made numerous accommodations for the claimant during his nearly 14 years as an employee. He was given time off and allowed to arrive late because he had parenting and family issues. He communicated in a demeaning manner with members of the staff and this too was overlooked to a point because of his introverted nature.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The claimant is not eligible for unemployment insurance benefits. The credible evidence in this case establishes that the claimant was given preferential treatment by his employer and every effort was made to keep him gainfully employed. The claimant apparently got upset when the employer used some profanity while talking to the claimant on October 26, 2013. This appears to have been a onetime occurrence and was not a pattern, according to witness Tim Greigo. The claimant made some derogatory comments about another employee and the employer had every right to talk to the claimant about it. While the administrative law judge cannot approve of the use of profanity in the workplace, a onetime instance does not make a hostile workplace. Benefits are denied.

The next issue is overpayment of benefits. Reference 41a The overpayment issue is remanded to the Claims Section for determination.

DECISION:

The decision of the representative dated November 21, 2012, reference 01, is reversed. 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. The overpayment issue is remanded to the Claims Section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css