

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

Appeal Number: 04A-UI-04450-DWT
OC 06/22/03 R 02
Claimant: Respondent (4)

ROBERT J LEE
204 – 4TH ST
DES MOINES IA 50309

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.

VLG INN/BAKERS SQU-VICORP REST
C/O EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

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 are 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
871 IAC 24.27 – Voluntary Quit Part-Time Employment

STATEMENT OF THE CASE:

Village Inn/Bakers Square – Vicorp Restaurant (employer) appealed a representative's April 9, 2004 decision (reference 05) that concluded Robert J. Lee (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 May 12, 2004. The claimant participated in the hearing. Sandy Fitch, a representative with Employers Unity, Inc., appeared on the employer's behalf with Donna Johnson, the regional manager, and Ken Cariens to testify 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 part-time employment?

FINDINGS OF FACT:

The claimant started working for the employer in September 2003. The claimant worked as a part-time cook, 16 to 20 hours a week.

The claimant filed a sexual harassment complaint against another cook on or about December 10, 2003. The claimant met with Johnson and Cariens on December 13, 2003 to discuss the problems the claimant had with a cook. The employer told the claimant his complaint would be addressed and if he had any further problems he just needed to contact Johnson. After the claimant filed his complaint, he believed his co-workers verbally abused him for making the complaint. The claimant did not report any further problems to the employer.

On February 20, 2004, Johnson went to the claimant's restaurant. When Johnson and Cariens asked the claimant if his December complaint had been resolved, the claimant reported everything was fine and he had not had any problems since he filed his complaint.

On February 26, Cariens sent a cook home before lunch because the restaurant was slow. The claimant and another cook, B., continued working. When Cariens noticed customers were waiting more than 10 to 15 minutes for their food, he went back to the kitchen to help so the food orders would get to the customers in a timely manner. Cariens actions offended the claimant. The claimant concluded Cariens was trying to tell the claimant that he did not know what he was doing. After Cariens left the kitchen, a co-worker made a comment that insinuated Cariens had to come back and help in the kitchen because the claimant did not know what he was doing. After this comment was made, the claimant told this co-worker he was tired of this and left work early. The claimant did not return to work. The next day the claimant contacted Johnson and reported several problems he had with employees. The claimant did not offer to return to work and did not.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. The claimant voluntarily quit his employment on February 26, 2003, when he walked off the job and did not return. 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 claimant quit for reasons that would not qualify him to receive unemployment insurance benefits. Since the claimant did not report any problems after his mid-December 2003 complaint and specifically told the employer on February 20, 2004 that there were no problems, the evidence does not establish the claimant quit because of intolerable or detrimental working conditions. 87 1 IAC 24.26(4). Instead, the evidence shows the claimant quit because he incorrectly concluded Cariens attempted to embarrass or humiliate him when he came back to the kitchen on February 26 and helped get orders to customers. A co-worker confirmed the claimant's conclusion with his comment that the claimant did not know what he was doing. The claimant quit on February 26, 2004 for reasons that would not qualify him to receive unemployment insurance benefits. 871 IAC 24.25(21).

If the claimant had been working full time, he would not qualify to receive unemployment insurance benefits. When a claimant quits a part-time job without good cause and has not requalified but is monetarily eligible to receive benefits based on wages paid by his regular or base period wages, he is not disqualified from receiving unemployment insurance benefits for quitting a part-time job. 871 IAC 24.27.

In this case, the employer is not a base period employer and will not be charged any benefits paid to the claimant during his current benefit year or if the employer becomes a base period employer in a subsequent benefit year. Iowa Code §96.7-2(a)(2). As of February 22, 2004, the claimant is qualified to receive unemployment insurance benefits because he quit a part-time job on February 26, 2004.

DECISION:

The representative's April 9, 2004 decision (reference 05) is modified in the employer's favor. The claimant voluntarily quit his employment for reasons that do not constitute good cause. Therefore, the employer's account will not be charged. Since the claimant quit a part-time job and is monetarily eligible to receive benefits based on wages from his base period employers during his current benefit year, the claimant is qualified to receive benefits as of February 22, 2004, provided he meets all other eligibility requirements.

dlw/kjf