

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS M SMITH
Claimant

APPEAL NO. 11A-UI-04132-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SMITH & SMITH INVESTORS
HAWKEYE ADJUSTMENT**
Employer

OC: 02/06/11
Claimant: Appellant (1/R)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Thomas Smith (claimant) appealed a representative's March 25, 2011 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Hawkeye Adjustment (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 20, 2011. The claimant participated personally and through his certified public account, Joe Mohrhauser. The employer participated by Wayne Carter, President.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 28, 2007, as a part-time sales person. The claimant was hired by the employer after selling his company to the employer. He planned to work ten days per month for the employer until he retired. He moved to Nevada in November 2007. The claimant and the employer were unhappy with the work environment. The employer noticed that some of the claimant's accounts were leaving the company. The claimant was told by unknown persons that the employer said bad things about him in coffee and barber shops. The claimant did not say anything to the employer about this. If he had, the employer would have denied any and all comments.

In mid February 2008, the claimant asked the employer if he was happy. The employer said that he was not. The claimant walked out and did not return for two weeks. On March 1, 2008, the employer and the claimant signed a Notice of Resignation effective February 29, 2008. The claimant resigned and was to be paid a gross monthly wage minus deductions through February 2010. Continued work was available had the claimant not resigned.

The claimant filed for unemployment insurance benefits with an effective date of March 28, 2010. On or about April 25, 2011, the claimant is flying to Hawaii for medical purposes. He will be in treatment for 49 days.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant voluntarily quit work without good cause attributable to the employer.

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(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer that he was leaving and quit work. When an employee quits work because he is dissatisfied with the work environment, his leaving is without good cause attributable to the employer. The claimant left work because he did not like his work environment. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The issue of whether the claimant is able and available for work is remanded for determination.

DECISION:

The representative's March 25, 2011 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The issue of whether the claimant is able and available for work is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css