IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

AARON W KING
Claimant

TROSTEL'S INC
Employer

APPEAL NO: 06A-UI-07377-SW

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/25/06 R: 02
Claimant: Respondent (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 18, 2006, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. Hearings were held on August 9 and 11, 2006, in Des Moines, Iowa. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Robert King. Paul Tostel participated in the hearing on behalf of the employer with witnesses, Suzanne Summy and Jeff Duncan. Exhibits One through Seven and A and B were admitted into evidence at the hearing. The authorization for payroll increase dated February 13, 2006, was mistakenly marked Exhibit 3 and has been remarked Exhibit 7.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer? Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant, Aaron King, worked for the employer, Tostel's Dish, as head chef from September 1, 2005, to June 13, 2006. Paul Trostel is the co-owner of the restaurant along with Suzanne Summy. Jeff Duncan is the general manager.

King voluntarily quit employment with a written resignation on June 13, 2006, to be effective on June 25, 2006. After he submitted his resignation, the employer terminated his employment immediately. King filed a new claim for unemployment insurance benefits with an effective date of June 26, 2006. The claimant filed for and received a total of $1,620.00 in unemployment insurance benefits for the weeks between June 25 and August 5, 2006.

King quit his employment because: (1) he did not receive the starting pay of at least $45,000.00 per year that was discussed when he was hired; (2) he moved to Des Moines from San Jose, California, in January 2005 in reliance on the employer's representations that Trostel's Dish would be opening in February 2005, but the restaurant did not officially open until October 2005; (3) he believed he was entitled to a bonus based on his performance and efforts but there was

no definite plan for bonuses established; (4) he believed that his labor cost goals were too low and resulted in his staff being overworked; (5) he was not supported when he tried to establish a schedule to allow him and his sous chef two days off per week; (6) he believed Trostel did not appreciate his efforts, did not treat him respectfully, and made him stay later than required after he had completed his work duties; and (7) he believed that the employer was requiring him to open the restaurant for lunch in June 2006 without adequate staffing or preparation.

When King was hired, he was informed that the restaurant would be opening in February 2005 and that his starting rate of pay as head chef would be not less than $45,000.00 per year. He moved to Des Moines and discovered that construction delays were preventing the restaurant from opening. He accepted an offer to work as a cook at another restaurant owned by the employer, Trostel's Greenbriar, at a rate of pay of $12.00 per hour, and started working there on January 20, 2005.

When Trostel's Dish had not opened by June 2005, King approached the employer about a change in his compensation. The parties agreed that he would receive a salary of $800.00 per week ($41,600.00 per year) and his salary would be reviewed three months after Trostel's Dish opened. His salary was increased to $900.00 per week ($46,800.00 per year) effective January 8, 2006.

King was working an average well over 65 hours per week and had very few days off work. There was no agreement between the parties regarding the maximum number of hours King would be required to work or days off. There were days when the claimant asked Paul Trostel if he could leave work before the restaurant closed but Trostel insisted that he stay late.

On one occasion in 2006, after the restaurant had received a four-star rating, Trostel had made a statement to King in front of other employees that he was going have to send his head chef to dessert school, which insulted King. He felt unappreciated and believed his work performance warranted compliments not insults.

Plans were discussed starting in March 2006 for the restaurant to open for lunch in May or June 2006. King was a party to these discussions. The date was set as June 13 to open for lunch, and it was announced at the end of May. On June 11, 2006, an all-staff meeting was held. On June 12, 2006, King met with Summy and expressed his anxiety about opening for lunch. He did not think he had enough staff and was not prepared. He told her that he thought he was having a nervous breakdown because of the stress. He had not informed management about these concerns previously. Summy reassured him that if he felt that he could not open the restaurant for lunch on June 13, they would delay the opening. She told him that they could discuss the matter at the regular management meeting scheduled then next day at 2:00 p.m. After meeting with King, Summy made arrangement for staff from other restaurants owned by Trostel to assist with the lunch opening.

At the management meeting on June 13, 2006, King submitted his resignation. The restaurant opened for lunch the next day with adequate staffing and minimal problems.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether King voluntarily quit employment without good cause attributable to the employer. The unemployment insurance rules provide that a claimant who is terminated immediately after giving notice of resignation on a future date is eligible for benefits during the period of time between the termination date and the date of resignation. The rules further provide that the quit issue has to be determined as of the date of the resignation. 871

IAC 24.26(12). Since King did not file for benefits until after the effective date of his resignation, this rule does not apply.

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 24.26(1) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

871 IAC 24.26(4) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (4) The claimant left due to intolerable or detrimental working conditions.

While working conditions were obviously stressful and difficult at times, the evidence fails to establish they were objectively intolerable or detrimental. Further, the evidence does not establish any breach of the employment agreement at the time King resigned. King accepted the offer to work at Greenbriar and was paid in accordance with that offer. King then accepted the salary of $800.00 per week with a review three months after the restaurant opened. He got a raise effective January 8, 2006, and while he was dissatisfied with the amount of the raise, he accepted it. There was no guarantee of any bonuses or agreement on the maximum number of hours of work per week. Working between 60 and 70 hour per week is unquestionably not an easy workload, but under the circumstances, it breached no employment agreement nor can it be considered intolerable.

All employees would like an employer who is complimentary and appreciates their hard work and talents, but the absence of such praise or appreciation cannot be considered intolerable. Finally, Summy handled the lunch opening properly and it appears King’s concerns were overstated although I do not doubt his concerns were sincere.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

> 7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits was overpaid $1,620.00 in benefits for the weeks between June 25 and August 5, 2006

DECISION:

The unemployment insurance decision dated July 18, 2006, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid $1,620.00 in unemployment insurance benefits, which must be repaid.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs