

**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**

**JAMES L JOHNSON III  
21338 FALCON AVE  
WELLSBURG IA 50680**

**CAMP DAVID INC  
119 MAIN ST  
IOWA FALLS IA 50126-2204**

**Appeal Number: 05A-UI-11117-JTT  
OC: 05/08/05 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Claimant James Johnson filed a timely appeal from the October 18, 2005, reference 05, decision that denied benefits. After due notice was issued, a hearing was held on November 14, 2005. Mr. Johnson participated. Owner David Krogh represented the employer and presented additional testimony through General Manager Kenneth Alberg.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Johnson was employed by Camp David restaurant as an assistant kitchen manager from May 14, 2005 until September 5, 2005, when he quit. The employer had hired Mr. Johnson to assist and relieve General Manager Kenneth Alberg. The employer advised Mr. Johnson at the time of hire that one of Mr. Johnson's core responsibilities would be to close

the restaurant. On Labor Day, September 5, Mr. Johnson was scheduled to work from 4:00 p.m. to close, but did not appear for work until approximately 5:00 p.m. Though the restaurant was usually open only for evening business, it was open for daytime business on Labor Day to accommodate attendees of a local car show. The employer intended to close the restaurant earlier than usual, but did not know when business would slow sufficiently to justify closing.

When Mr. Johnson arrived for work, he was upset about several different things. Shortly after Mr. Johnson arrived for work, he decided to confront owner David Krogh with his various concerns about the employment. Mr. Johnson advised Mr. Krogh that he was disappointed that kitchen employees were not following his directions. Mr. Johnson indicated he was upset that he had been told he would have a day off that weekend and then had to work. Mr. Johnson was upset because he had experienced a house fire the previous day and thought the general manager had been insensitive when Mr. Johnson called to advise of the fire and his need to be late to work. Mr. Johnson was upset because he had relocated 45 minutes away from the restaurant after the fire and did not want to travel to work that night to work a short shift. Mr. Johnson was upset because he thought the employer had misled him into believing the restaurant would be opened the entire evening and had then arrived to learn the restaurant would close early.

At approximately 6:15 p.m., Mr. Johnson exited the restaurant and advised Mr. Krogh that he was leaving and another employee was closing the kitchen. The other employee was a young teenager not qualified to perform Mr. Johnson's duties. Mr. Krogh told Mr. Johnson, "If you're leaving, I assume you're quitting." Mr. Johnson responded, "Then I guess I'm quitting." The employer continued to have work available to Mr. Johnson.

The next Wednesday was the scheduled payday. On September 7, Mr. Johnson returned to collect his final paycheck. Mr. Johnson did not return to the restaurant with the intention of reporting for work, though he was scheduled to work that day. It is the employer's practice to mail final paychecks to employees, and Mr. Johnson's paycheck was not available at the restaurant. This fact upset Mr. Johnson and prompted additional telephone exchanges between Mr. Johnson and Mr. Krogh.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Johnson's voluntary quit was for good cause attributable to the employer. It does not.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and

offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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 evidence in the record indicates that Mr. Johnson quit the employment because he was dissatisfied with the work environment. In addition, Mr. Johnson quit the employment rather than perform the assigned work as instructed and quit the employment because he did not want to work his assigned shift on September 5. Quits for any of these reasons are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21), (27) and (18). There had been no change in the conditions of employment. See 871 IAC 24.26(1). The working conditions were neither intolerable nor detrimental. See 871 IAC 24.26(4). Mr. Johnson evidenced his intention to sever the employment relationship during the conversation with Mr. Krogh on September 5 and carried out the quit by leaving the restaurant prior to the end of his shift. Mr. Johnson further evidenced his intention to sever the employment relationship by failing to report for subsequent shifts.

The evidence in the record indicates that Mr. Johnson voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Johnson is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Johnson.

DECISION:

The Agency representative's decision dated October 18, 2005, reference 05, is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

jt/kjw