

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE D EAKES-NETSER
Claimant

APPEAL NO. 12A-UI-08818-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIOUX CITY DQ INC
Employer

**OC: 12/25/11
Claimant: Appellant (2-R)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated July 12, 2012, reference 07, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 16, 2012. The claimant participated personally. The employer participated by Steve Hill, concept manager. The record consists of the testimony of Jamie Eakes-Netser and the testimony of Steve Hill.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

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 operates a Dairy Queen restaurant in Iowa City, Iowa. The claimant was hired on December 5, 2011. She was a team member and was working the equivalent of full-time hours at the time of her separation of employment. The claimant's last day of work was June 3, 2012. On June 9, 2012, the claimant received a text manager from the manager, Corey, telling her that she was terminated. The claimant does not know why she was terminated.

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 evidence in this case established that the claimant was terminated by the employer and that she did not quit her job. The claimant's last day of actual work was June 3, 2012. She was off work on June 4, 2012, and June 5, 2012, due to the fact that she had doctor's appointments. What happened from then on is almost impossible to determine, because both the claimant and the employer chose to communicate primarily by text message. The claimant testified that she picked up her check on June 6, 2012, and was told that she was not on the schedule. As a result, the claimant did not come to work. On June 9, 2012, she got a text message telling her she was terminated. The alleged reason for her termination was her failure to respond to a text message and not showing up for work.

Corey, the manager who terminated the claimant, did not testify at the hearing. Mr. Hill, who did testify, did not have firsthand knowledge about occurred. The claimant credibly testified that she was told she was not on the schedule beginning June 6, 2012. What likely occurred was that Corey put her on the schedule and did not tell her. Under these circumstances, there was no voluntary quit and insufficient evidence of misconduct. Benefits are allowed, if the claimant is otherwise eligible.

The claimant testified that she is under the care of physicians for her pregnancy and a heart problem. This raises the issue of whether the claimant is able and available for work. This issue is remanded to the Claims Section for determination.

DECISION:

The representative's decision dated July 12, 2012, reference 07, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible. This matter is remanded to the Claims Section for a determination of whether the claimant is able and available for work.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw