

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN BLAKE**

Claimant

**APPEAL NO: 08A-UI-09328-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BISTROS AND MORE INC**

Employer

**OC: 09/14/08 R: 02  
Claimant: Respondent (2/R)**

Section 96.5-1 - Voluntary Quit  
871 IAC 24.27 - Voluntary Quit of Part-Time Employment  
Section 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Bistros and More, Inc. (employer), doing business a Old Chicago, appealed an unemployment insurance decision dated October 7, 2008, reference 01, which held that Steven Blake (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 29, 2008. The claimant participated in the hearing. The employer participated through Josh Van Dyke, General Manager. Employer's Exhibit One was admitted into evidence. 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:**

The issue is whether the claimant's voluntary separation from his part-time employment qualifies him to receive unemployment insurance benefits?

**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 employed as a part-time kitchen cook and server from October 3, 2007 through September 15, 2008. He signed a resignation form on August 27, 2008 indicating he voluntarily quit for personal reasons and his last day would be September 15, 2008. The general manager went on vacation that week and when he returned he was advised the claimant wanted to rescind his resignation notice. The manager is the only individual who could rescind the resignation notice and he had not yet met with the claimant. The claimant became angry and yelled at a supervisor in front of customers on September 13, 2008. The manager directed the staff not to let the claimant work on September 14, 2008 until he met with the manager on September 15, 2008.

The claimant met with the manager on September 15, 2008 and discussed whether the claimant would continue employment. The manager had issues with the claimant's performance due to repeated tardiness, a negative attitude and an unprofessional appearance. The claimant said

he used to enjoy working there but now everyone there sucks and is retarded. He said it "pisses" him off to have to "work with stupid people all the time." The employer advised the claimant if he was going to continue working, his attitude and attendance had to improve or he would be terminated in the near future. The claimant said he would rather quit on good terms than risk being terminated and he signed a second resignation notice.

The claimant filed a claim for unemployment insurance benefits effective September 14, 2008 and has received benefits after the separation from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits.

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 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

The claimant has the burden of proving that the voluntary quit was for a good reason that would not disqualify him. Iowa Code section 96.6-2. He signed a resignation notice on August 27, 2008 indicating he quit for personal reasons. He subsequently wanted to rescind that resignation and while the employer agreed to talk to him, the resignation was never rescinded. The Iowa Court of Appeals considers it a voluntary quit when a claimant gives notice of resignation which is accepted by the employer, even though the claimant subsequently attempts to withdraw the resignation. Langley v. EAB, 490 N.W.2d 300 (Iowa App. 1992). The claimant has not satisfied that burden. Benefits are denied from this employer.

However, an individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. Benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the

wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27.

Based on this regulation, this matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits when the wage credits the claimant earned while working for the employer are not used in determining the claimant's monetary eligibility or his maximum weekly benefit amount.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated October 7, 2008, reference 01, is reversed. The claimant voluntarily quit his part-time employment for disqualifying reasons. Therefore, the employer's account will not be charged. This matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits and to determine what his maximum weekly benefit amount is when the wage credits the claimant earned from the employer are not taken into consideration to determine these two issues. The matter is also remanded for an investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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