

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARTHUR E KANELLIS
Claimant

APPEAL NO. 11A-UI-02785-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

P J IOWA LC
Employer

OC: 12/19/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 30, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 30, 2011. The claimant participated. The employer participated by Cayle Campbell, area supervisor, and Mark Hauder, vice president of operations. The record consists of the testimony of Arthur Kanellis; the testimony of Cayle Campbell; and the testimony of Mark Hauder.

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 owns and operates 24 Papa John's pizza restaurants. The claimant began working for the employer on August 8, 2007. He held a variety of positions with the employer. His final job was at the restaurant located in Dubuque, Iowa. His last day of work was October 27, 2010. The claimant voluntarily resigned his position on October 27, 2010.

On September 9, 2010, the claimant asked Cayle Campbell if he could be demoted from general manager to shift supervisor due to family responsibilities. The claimant indicated that he would work from October 24, 2010, as a shift supervisor until Thanksgiving. He would then be leaving the company in order to move back to Cedar Rapids, Iowa. The claimant's father had been diagnosed with Stage IV cancer and the claimant had to relocate.

The claimant worked on October 27, 2010. He left his keys and a note indicating that "you may turn me out," which meant that he should no longer be put on the schedule. Work was available for the claimant at the time he quit his job.

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.

871 IAC 24.25(23) 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

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 is uncontroverted that it was the claimant who initiated the separation of employment. The claimant had informed his employer on September 9, 2010, that he wanted a demotion from general manager to shift supervisor, which would be effective October 24, 2010. He was going to resign around Thanksgiving 2010. The claimant wanted to move from Dubuque to Cedar Rapids because his father was ill. The claimant abruptly quit on October 27, 2010.

The claimant may have had good personal reasons for quitting his job, but those reasons do not constitute good cause attributable to the employer. The claimant was apparently hoping he might get a transfer to the Cedar Rapids restaurant. He did not voice this request to either Mr. Campbell or Mr. Hauder. There was nothing in the contract of hire that permitted the claimant to designate where he would work or require the employer to transfer him on request. Since the claimant voluntarily quit without good cause attributable to the employer, benefits are denied.

DECISION:

The representative's decision dated March 30, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw