

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JAMES N BRIERTON
Claimant

BOARD AND BATTON LLC
Employer

APPEAL NO. 23A-UI-00018-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/13/22
Claimant: Respondent (4)**

Iowa Code Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

On January 1, 2023, the employer filed a timely appeal from the December 22, 2022 (reference 03) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the claimant was discharged on June 1, 2022 for no disqualifying reason. After due notice was issued, a hearing was held on January 23, 2023. James Brierton (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Bryan George represented the employer. Exhibit 1, the online appeal was received into evidence, except for that portion of the exhibit that references irrelevant information concerning other employments. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: the reference 01 through reference 04 decisions, DBRO, KFFV, WAGE-A, and the reference 03 fact-finding notes that document the employer's participation in the fact-finding interview.

At the employer's request, the administrative law judge left the hearing record open for the limited purpose of allowing the employer to submit an affidavit signed by the claimant. On January 23, 2023, the employer submitted the affidavit, which was received into evidence as Exhibit B.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntary quit without good cause attributable to the employer.

Whether the claimant voluntary quit for the sole purpose of accepting other or better employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Brierton (claimant) was employed by Board and Batten, L.L.C. as a part-time clerk/custodian from March 3, 2022 until June 1, 2022, when he voluntarily quit the employment to focus on other employment with Heart of America. Bryan George and Theresa George,

husband and wife, own and operate Board and Batten, L.L.C., an antiques and gift boutique. The employer hired the claimant to assist on Thursday evenings. The claimant usually worked four to five hours a week. Mr. George is also employed by Heart of America as a regional maintenance executive and facilitated the claimant being hired by Heart of America in a bartending position. Immediately before the claimant's voluntary separation from Board and Batten, Heart of America commenced needing the claimant's services on Thursday evenings, which made the claimant unavailable for the Thursday evening work with Board and Batten. The claimant elected to voluntarily separate from Board and Batten in order to focus on the Heart of America job, which offered the claimant a greater number of weekly hours. At the time the claimant voluntarily separated from Board and Batten, that employer continued to have the same employment available for the claimant.

The claimant established an original claim for benefits that was effective November 13, 2022 and received benefits. Board and Batten, L.L.C. is a base period employer. On December 21, 2022, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed the claimant separation from the employment. Brian George represented the employer at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

The evidence in the record establishes the claimant voluntarily quit the Board and Batten employment effective June 1, 2022 for the sole purpose of focusing on the new primary employment with Heart of America. Because the voluntary quit was without good cause attributable to Board and Batten, that employer's account will not be charged for benefits. Because the quit was for the sole purpose of accepting additional work with the other employer, the quit from Board and Batten does not disqualify the claimant for unemployment insurance benefits. The claimant is eligible for benefits, provided he is otherwise eligible. Benefits relating to wage credits earned with Board and Batten, L.L.C. shall be charged to the unemployment compensation fund.

DECISION:

The December 22, 2022 (reference 03) decision is MODIFIED in favor of the employer/appellant as follows. The claimant voluntarily quit the Board and Batten employment effective June 1, 2022 for the sole purpose of focusing on the new primary employment with Heart of America. Because the voluntary quit was without good cause attributable to Board and Batten, that employer's account will not be charged for benefits. Because the quit was for the sole purpose of accepting additional work with the other employer, the quit from Board and Batten does not disqualify the claimant for unemployment insurance benefits. The claimant is eligible for benefits, provided he is otherwise eligible. Benefits relating to wage credits earned with Board and Batten, L.L.C. shall be charged to the unemployment compensation fund.



James E. Timberland
Administrative Law Judge

January 25, 2023
Decision Dated and Mailed

jet/mh

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.