

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER S WILLIAMS
Claimant

APPEAL NO. 17A-UI-04128-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ATRIUM HOSPITALITY LP
Employer

OC: 05/29/16
Claimant: Respondent (2)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Atrium Hospitality (employer) appealed a representative's April 5, 2017, decision (reference 06) that concluded Amber Williams (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 8, 2017. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Erica Kirkland, Director of Human Resources. Exhibit D-1 was received into evidence. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on September 13, 2016, as a part-time banquet server. The claimant signed for receipt of the employer's attendance policy on September 13, 2016. On October 8, 2016, the claimant called the employer regarding her first scheduled shift of the day. She said she could not work because her childcare had changed and she was not sure of her availability. The claimant was scheduled for the lunch and dinner shift that day. She indicated she would call the employer regarding the dinner shift and her availability for the following week. The claimant did not appear for work or notify the employer of her absence for the dinner shift on October 8, 2016, or her shift on October 11, 2016. The employer called the claimant but she did not answer. The claimant did not contact the employer again.

The claimant filed for unemployment insurance benefits with an effective date of May 29, 2016. She has received no benefits since her separation from employment. The employer provided the name and telephone number of Krystal Duguay as the person who would participate in the fact-finding interview on April 4, 2017. The fact finder called her but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code § 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 voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980)*. The claimant's intention to voluntarily leave work was evidenced by the claimant's actions. The claimant stopped appearing for work and answering the telephone. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's April 5, 2017, decision (reference 06) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn