

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DONNELL PEARL**  
Claimant

**KIMS FOODS INC-WENDY'S**  
Employer

**APPEAL 23A-UI-09212-PT-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/06/23**  
**Claimant: Respondent (2)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Overpayment of Benefits  
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated September 18, 2023, (reference 05) that held claimant eligible for unemployment insurance benefits. After due notice, a telephonic hearing was held on October 13, 2023. Claimant did not participate. The employer participated through District Manager Rebecca Burns. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Whether claimant quit for good cause attributable to employer.  
Whether claimant has been overpaid any unemployment insurance benefits, and if so, whether the repayment of those benefits to the agency can be waived.  
Whether any charges to the employer's account can be waived.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was employed full-time as a shift supervisor from February 8, 2023, until claimant's employment ended on July 31, 2023. As a shift supervisor, claimant was responsible for overseeing the restaurant, ensuring employees were correctly performing their duties, reviewing the cash registers, and performing inventory.

In June and July 2023, claimant submitted several complaints to upper management about the store's general manager. Claimant reported that the general manager was disrespectful to him and he recounted an incident where both he and the general manager had yelled at one another. That summer, the district manager mediated a conversation between claimant and the store manager to try to improve their relationship.

Mid-way through claimant's shift on July 31, 2023, claimant became upset, threw his headset on the ground, and left the employer's premises. Claimant did not tell anyone why he was leaving and, by leaving work early, claimant left the employer without a supervisor on duty. Claimant did not appear for his shift the next day and the employer had not further contact with claimant. The

employer interpreted claimant's actions to mean claimant had abandoned his job. Had claimant not quit, there was continuing work available.

Claimant's administrative records indicate that claimant filed his original claim for benefits with an effective date of August 6, 2023. Since filing his initial claim, claimant has received no unemployment insurance benefits. The administrative record and testimony at hearing indicates that the employer did not substantially participate in fact finding.

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

For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.5(1)c 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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, claimant had an intention to quit and carried out that intention by walking off the job mid-way through his shift and failing to report to work or communicate with the employer after July 31, 2023. This conduct evidences an intention to terminate the employment relationship. As such, claimant voluntarily quit.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer, or that another exception to the rule exists. Iowa Code § 96.6(2). If the claimant fails to meet their burden, the separation from employment is disqualifying.

Iowa Admin. Code r. 871-24.25(4), (6), (21) and (22) provide:

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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rules.

- (6) The claimant left as a result of an inability to work with other employees.
- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.

In this case, while claimant may have had legitimate reasons to be upset with the store's general manager or about the stress and difficulty of his job duties, the evidence does not demonstrate that the store manager's conduct or claimant's responsibilities amounted to an unsafe, unlawful, intolerable, or detrimental working environment. While claimant's decision to quit his employment may have been for good personal reasons, claimant has not met his burden of proving that he voluntarily quit his employment for a good cause reason attributable to the employer. As such, benefits must be denied.

Because no benefits were paid to claimant, the issues of overpayment, repayment and chargeability are moot.

**DECISION:**

The decision of the representative dated September 18, 2023, (reference 05) is reversed. The claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.



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Patrick B. Thomas  
Administrative Law Judge

October 17, 2023  
Decision Dated and Mailed

pbt/scn

**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  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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.