

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TERRANCE J WERMES
929 N ALICE ST
SIOUX CITY IA 51105

JAMES HANSCOM LLC
LITTLE CAESARS PIZZA
2121 HAMILTON BLVD
SIOUX CITY IA 51104

Appeal Number: 05A-UI-11249-DWT
OC: 10/09/05 R: 01
Claimant: Respondent (5)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Little Caesars Pizza (employer) appealed a representative's October 25, 2005 decision (reference 03) that concluded Terrance J. Wermes (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation occurred for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 16, 2005. The claimant participated in the hearing. James Hanscom, the owner, appeared on the employer's behalf. 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:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 28, 2004. The claimant worked as a part-time delivery driver. Between deliveries or about 15 percent of his time, the claimant worked in the restaurant and performed various tasks. The employer thought the claimant was good at the landing position where pizzas are cut and boxed. As a driver the claimant earned \$6.00 an hour, plus \$2.00 for every delivery he made and tips. The claimant usually made at least \$10.00 to 12.00 an hour as a delivery driver.

On October 5, 2005, the employer informed the claimant a business decision had been made to immediately discontinue the delivery service. This meant the claimant no longer had a job driving and delivering pizzas. The employer offered the claimant continued employment as an inside person. The employer offered the claimant the same hours that he had been working and the same hourly wage of \$6.00 an hour.

On October 5, 2005, the claimant declined the employer's offer of continuous inside work because he considered himself a professional driver, all of his work experience was as a professional driver and the employer had hired him as a driver. The claimant did not like to work the landing position and this is the job the employer would have given him because the employee who had been working the landing position had recently quit. The claimant did not like the work environment if he had to work inside all the time.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits without good cause attributable to the employer or the employer discharges him for work-connected misconduct. Iowa Code §§96.5-1, 2-a. Even though the employer eliminated the claimant's position as a delivery driver, the claimant chose to discontinue his employment after the employer offered him continued employment as an inside person. Under these facts, the claimant made the decision to quit working for the employer. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant quits with good cause when he leaves employment because of a substantial change in the employment relationship. 871 IAC 24.26(1). The claimant quit because the employer changed his employment from delivery driver to an inside person. Even though the claimant worked as an inside person between deliveries, the facts indicate he worked this position approximately 15 percent of the time, not 100 percent. While the employer has the right to change an employee's job duties, this change amounted to a substantial change. As a result, the claimant quit his employment for reasons that qualify him to receive unemployment insurance benefits.

DECISION:

The representative's October 25, 2005 decision (reference 03) is modified but the modification has no legal consequence. The claimant quit his employment for reasons that qualify him to receive unemployment insurance benefits. As of October 9, 2005, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/tjc