

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BAHATI GERALD
Claimant

APPEAL NO. 15A-UI-01381-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH SERVICES WEST LLC
Employer

**OC: 12/21/14
Claimant: Respondent (4)**

Section 96.5-1 – Voluntary Quit
Section 96.5(1)g – Voluntary Leaving/Requalification

STATEMENT OF THE CASE:

SDH Services West (employer) appealed a representative's January 20, 2015 (reference 03) decision that concluded SDH Services West (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 March 13, 2015. The claimant participated personally. The employer participated by Zachary Smith, Executive Chef; Judi Vilaylak, Unemployment Insurance Consultant; and Abby Padilla, Director of Dining Services.

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 December 20, 2013 as a part-time food service worker utility dish room attendant working 10:00 a.m. to 3:00 p.m. In about January 2014 the claimant took a full-time job at Bon Appetit. He asked the employer if he could change his hours and work 10:00 a.m. to 1:00 p.m. The employer complied with his request. On April 14, 2014 the claimant requested time off from June 3 through August 9, 2014 to travel to Africa. The employer told the claimant his job would not be guaranteed upon his return.

On August 10, 2014 the claimant returned and requested his previous job. The employer offered the claimant a new job as a part-time food service worker utility dish room attendant working 10:00 a.m. to 3:00 p.m. The claimant wanted to work from 10:00 a.m. to 1:00 p.m. because he had a full-time job to return to at Bon Appetit. The employer did not have work for the claimant at the reduced schedule.

The claimant filed for unemployment insurance benefits with an effective date of December 21, 2015. The employer participated personally at the fact-finding interview on January 16, 2015, by Judi Vilaylak.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer but has requalified and is otherwise monetarily eligible.

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.

Iowa Admin. Code r. 871-24.25(20) 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 § 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 § 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

Iowa Code § 96.5-1-g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be

made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

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 his words and actions. He was absent from work for personal reasons for more than ten working days. When an employee is absent from work for more than ten working days for compelling personal reasons, his leaving is without good cause attributable to the employer. The claimant left work on June 2, 2014 for more than ten working days for compelling personal reasons. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer.

The separation is disqualifying, however, the claimant has requalified for benefits since the separation and is otherwise monetarily eligible according to base-period wages. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's January 20, 2015 (reference 03) decision is modified in favor of the appellant. The claimant voluntarily left the employment without good cause attributable to the employer. The claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/can