

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIZABETH J BRAUN**  
Claimant

**APPEAL NO. 10A-UI-02580-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURGER KING CORPORATION**  
Employer

**OC: 01/01/10**  
**Claimant: Respondent (2-R)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 1, 2010, reference 01 decision that allowed benefits. After due notice was issued, a hearing was held on April 1, 2010. Claimant Elizabeth Braun did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Jerry Prenininger, General Manager, represented the employer.

**ISSUE:**

Whether the claimant separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Elizabeth Braun was employed by Burger King Corporation as a full-time hourly shift coordinator from July 2008 until November 13, 2009. Ms. Braun's immediate supervisor was Jerry Prenininger, General Manager. On November 13, 2009, Ms. Braun contacted Mr. Prenininger and told him that she would be absent from work that day because the police were after her for child endangerment. Ms. Braun neither returned to the employment nor made further contact with the employer. The employer continued to have work available for Ms. Braun.

**REASONING AND CONCLUSIONS OF LAW:**

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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 Code section 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.

The evidence in the record indicates that Ms. Braun was not discharged from the employment, but instead voluntarily quit the employment for personal reasons. Ms. Braun's voluntarily quit was without good cause attributable to the employer. Accordingly, Ms. Braun is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Braun.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The Agency representatives February 1, 2010, reference 01 decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/css