

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRUCE E KEYS

Claimant

APPEAL NO: 08A-UI-03834-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIMS FOODS INC – WENDY’S

Employer

**OC: 03/16/08 R: 02
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Kim’s Foods, Inc. – Wendy’s (employer) appealed a representative’s April 8, 2008 decision (reference 01) that concluded Bruce E. Keys (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on May 5, 2008. The claimant participated in the hearing. Jennifer Coe of TALX Employer Services appeared on the employer’s behalf and presented testimony from one witness, Fred Klinge. 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 for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on November 28, 2006. He worked part time (approximately 30 hours per week) as a crew member at the employer’s Des Moines, Iowa restaurant. His last day was on or about May 20, 2007.

The claimant expressed some interest in becoming an assistant manager a month or two before May 2007, and the general manager, Mr. Klinge, had sent the claimant to some of the training necessary for the claimant to become an assistant manager. However, by May 2007 the claimant had not been given a formal promotion or a wage raise as an assistant manager. The claimant determined that the process was not moving quickly enough, and so decided to stop reporting for work. He did not discuss his concerns with Mr. Klinge.

The claimant established a claim for unemployment insurance benefits effective March 16, 2008. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$770.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Quitting because a desired promotion or wage raise has not been given is not good cause for quitting. 871 IAC 24.25(13), (21). The claimant has not satisfied his burden. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's April 8, 2008 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of May 20, 2007, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs