

**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**

**GREG E THEIS
3315 TRANSIT AVE
SIOUX CITY IA 51106**

**RED ROBIN RESTAURANT
4900 SERGEANT RD
SIOUX CITY IA 51106**

**RICHARD STURGEON
PO BOX 3372
SIOUX CITY IA 51102-3372**

**Appeal Number: 06A-UI-00142-DT
OC: 06/26/05 R: 01
Claimant: Appellant (1)**

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 Leaving

STATEMENT OF THE CASE:

Greg E. Thies (claimant) appealed a representative's December 28, 2005 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Red Robin restaurant (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 23, 2006. The claimant participated in the hearing and was represented by Richard Sturgeon, personal representative. Steve Hill 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 for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on September 24, 2005. He worked full time as dishwasher, generally on a schedule of Wednesday through Sunday, 8:00 a.m. to 4:00 p.m. His last day of work was December 2, 2005.

The claimant had injured his back at work in early November 2005. The kitchen manager sent him to the urgent care facility for medical care, and the doctor ordered him off work for a short while. He returned to work at least as of November 10, 2005, and worked his regular schedule through December 2.

After the claimant's return to work, Mr. Hill, the general manager, asked the claimant from time to time if he had gotten some documentation from the doctor needed for handling the insurance paperwork. The last discussion was on December 2. Mr. Hill indicated that if the paperwork issue was not resolved, the insurance bills would start going to the claimant directly. The claimant understood that Mr. Hill did not want him to continue working unless he could obtain the doctor's paperwork, so he ceased reporting for work.

The claimant came in for his paycheck on December 9, 2005. Mr. Hill asked him what had happened to him, why he had not been at work. In actuality, the claimant was upset and frustrated about the problem with the medical paperwork, but instead of saying that, he said that he had taken a test drive for a truck driving position. While the claimant had in fact taken a test drive, he did not get the job driving trucks, as Mr. Hill understood him to mean. As a result of believing the claimant had found other work, Mr. Hill did not pursue the matter of his continued employment at the restaurant with him further.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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.

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. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant mistakenly believed that he was not to be at work until the medical paperwork was provided. However, when on December 9, 2005, the claimant had an opportunity to explain that he was not at work because of his belief that he was not supposed to be there until the paperwork issue was resolved, which could have lead to the employer clearing

up the misunderstanding, the claimant gave an answer leading the employer to reasonably conclude that the claimant was not at work and was ending his employment because he had found other work. Therefore, the claimant did exhibit the intent to quit 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 section 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's December 28, 2005 decision (reference 03) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of December 3, 2005, 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.

ld/kjw