

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNN A ROBINSON
Claimant

APPEAL NO. 09A-UI-17237-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HUCKLEBERRY ENTERTAINMENT LLC
FUN CITY**
Employer

OC: 10/18/09
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated November 2, 2009, reference 01, which denied benefits based upon the claimant's separation from Huckleberry Entertainment LLC. After due notice, a telephone hearing was scheduled for and held on December 21, 2009. The claimant participated personally. The employer participated by Mr. Steve Morley, Director of Human Resources. Exhibit One was received into evidence.

ISSUE:

At issue is whether the claimant voluntarily left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Mr. Robinson was employed as a full-time cook by the captioned employer doing business as Fun City from May 18, 2009 until November 16, 2009 when he discontinued to report for work.

Mr. Robinson failed to report or notify his employer of his impending absence on October 17, 2009. The claimant did not report to work again nor provide any notification to the employer of his impending absences or the reasons for them. Based upon the number of attendance infractions and points that the claimant had previously accumulated, Mr. Robinson believed that he might have been discharged from employment and therefore did not go back to work or attempt to save his job.

Although the company utilizes an attendance point system, the employer is willing to consider extenuating circumstances. The claimant had not been discharged from employment at the time he chose to discontinue reporting for work.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant left this employment with good cause attributable to the employer. It does not.

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(4) 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 section 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 section 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The evidence in the record establishes that the claimant was separated from employment after he failed to report for work on October 17, 2009 without providing any notification to the employer. The claimant did not report for three or more consecutive workdays and provided no notification. The employer reasonably concluded the claimant had chosen to voluntarily leave employment. Although the claimant was close to being discharged for exceeding the permissible number of attendance infraction points under the company's attendance policy, the claimant had not been discharged when he chose to discontinue reporting for available employment.

Good cause attributable to the employer has not been shown. Benefits are withheld.

DECISION:

The representative's decision dated November 2, 2009, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until 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.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css