

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER L CLARK
Claimant

APPEAL NO. 12A-UI-11218-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KALDERA CORP
Employer

OC: 08-26-12
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 12, 2012, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on October 11, 2012. The claimant did participate. The employer did participate through Vaso Apostolopoulou, Owner and Jessica Uren, Server.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a food server varied full time beginning in July, 2009 through 2012 when he voluntarily quit by abandoning his job. The claimant was waiting on a table of customers in the restaurant that was not very busy. After waiting for their food for about 30 minutes the customers became upset that it was taking so long to get their order. The claimant went to the kitchen and learned that the reason the customers' food was not ready was because he had not turned in the order ticket to the cooks. He got into a fight with the cooks for an issue that was caused by him. The claimant then walked off the job without permission. Ms. Apostolopoulou did not give him permission to leave. When he told her he was leaving she immediately began to telephone other employees to get someone to come into help Ms. Uren wait tables. Ms. Apostolopoulou was unable to locate another employee to come in to work, so Ms. Uren worked alone the rest of the shift. The claimant called Ms. Apostolopoulou the next day to see if he still had a job. He was told at that time that he was considered a voluntary quit for walking off the job without permission after having started a fight with the kitchen staff.

The record does not show that the claimant has earned ten times his weekly benefit amount since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without 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(6), (27) 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:

(6) The claimant left as a result of an inability to work with other employees.

(27) The claimant left rather than perform the assigned work as instructed.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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 walked off the job without permission because he forgot to turn in an order to the kitchen, then got into a fight about the situation with the kitchen workers. The administrative law judge is not persuaded that the claimant had permission to leave. There is no reason that the employer would give him permission to leave when she had to call for replacements. The claimant simply got angry and quit by walking off the job. Under these circumstances the claimant's leaving was without good cause attributable to the employer and benefits are denied.

Since no benefits have been paid, no overpayment applies.

DECISION:

The September 12, 2012 (reference 02) decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs