

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DWAYNE A CARTER
Claimant

BWW RESOURCES LLC
Employer

APPEAL NO. 21A-UI-08591-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Layoff

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 16, 2021, reference 05, decision that disqualified him for benefits and the held the employer’s account would not be charged for benefits, based on the deputy’s conclusion that the claimant voluntarily quit on April 25, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 9, 2021. The claimant participated. Hop Eldridge represented the employer. The administrative law judge took official notice of the WAGE-A quarterly wage report.

ISSUE:

Whether the claimant was discharged for misconduct, voluntarily quit without good cause attributable to the employer, or was laid off.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a Buffalo Wild Wings restaurant in a Mason City. The claimant began his part-time employment in 2013. Until March 2020, the claimant generally worked between 20 to 30 hours per week as a cook. Effective March 17, 2020, the Governor directed restaurants to close for in-person dining to slow the spread of COVID-19. The employer experienced a substantially reduced need for labor. The company restricted the number of reduced labor hours to be shared amongst the cooks. The employer struggled to provide full-time cooks with 20 hours per week. The employer was aware that the claimant has other part-time employment.

On or about March 27, 2020, Hope Eldridge, Kitchen Manager, spoke to the claimant about the employer’s predicament and told the claimant that she would need to reduce the claimant’s work hours “to almost nothing” in order to provide part-time hours to the full-time cooks. In other words, the employer laid off the claimant effective March 27, 2020. The claimant continued to be available for his regular work hours at the time of the layoff.

The employer recalled the claimant to the employment in August or September 2020, provided a pay increase, and assigned additional duties. The claimant continues in the employment.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(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).

The evidence in the record establishes that the claimant was laid off due to a lack of work effective March 27, 2020. The claimant did not voluntarily quit. Because the March 27, 2020 separation from the employment was a layoff, rather than a discharge for misconduct or a voluntary quit without good cause attributable to the employer, the claimant is eligible for benefits, provided he meets all other eligibility requirements, and the employer's account may be charged. See Iowa Code section 96.5(1) (regarding voluntary quits without good cause attributable to the employer) and 96.5(2)(a) (regarding discharges for misconduct).

DECISION:

The March 16, 2021, reference 05, decision is reversed. The claimant was laid off due to a lack of work effective March 27, 2020. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

June 22, 2021
Decision Dated and Mailed

jet/mh