

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DUSTIN D ACKERSON**  
Claimant

**BORDER FOODS OF IOWA LLC**  
Employer

**APPEAL 24A-UI-01357-PT-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 12/31/23**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Overpayment of Benefits  
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer, Border Foods of Iowa LLC, filed an appeal from a decision of a representative dated January 25, 2024, (reference 01) that held the claimant eligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on February 26, 2024. The claimant, Dustin Ackerson, participated personally. The employer participated through Area Coach Peggy Austin-Anderson. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Whether the claimant quit for good cause attributable to the employer.  
Whether the claimant has been overpaid any unemployment insurance benefits, and if so, whether the repayment of those benefits to the agency can be waived.  
Whether any charges to the employer's account can be waived.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was employed as a full-time assistant general manager with Border Foods of Iowa LLC from July 2022 until his employment ended on November 30, 2023. As an assistant general manager, the claimant was responsible for reviewing orders, opening and closing the restaurant, supervising employees, and overseeing the cash registers. The claimant typically worked the second shift, from 5:00 p.m. to 3:00 a.m.

During the course of claimant's employment with Border Foods of Iowa LLC, the claimant worked in two different restaurant locations. At the claimant's first location, the claimant reported to his supervisor that other employees were sexually harassing him. However, the claimant's supervisor did nothing to stop the harassment. In September 2022, the claimant filed a harassment complaint with the employer. The employer investigated the complaint and determined that the complaint was founded. It is unclear what specific actions were taken, but the employer's witness at the hearing indicated that the employer disciplined the employees involved in the harassment.

In August 2023, the employer determined that it had too many assistant general managers working at the claimant's restaurant location. For this reason, the employer asked the claimant whether he would be willing to transfer to a different restaurant location that was closer to his home. The claimant agreed to the transfer. At the new location, the claimant continued to work the same days and hours that he worked at the previous location.

During his time working at the second location, the claimant often became frustrated because the late shift—which he was responsible for supervising—was frequently understaffed. The claimant also felt that the store manager did not enforce the work rules strictly enough with the employees, which sometimes left the claimant feeling undermined when he tried to enforce work rules or direct employees on how to do their jobs. The claimant raised these concerns with the store manager, but he never reported any of these concerns to upper management or to the employer's human resources department.

On November 15, 2023, the claimant informed the store manager that he would be resigning his employment effective December 1, 2023, because he had purchased a new house and he was looking for employment closer to his new home. The store manager informed the employer that the claimant had given his two weeks notice and the employer accepted the claimant's resignation. A few days later, the claimant told his supervisor that he might be willing to stay and continue working the second shift if he could close the restaurant and end his shifts earlier. However, the store manager told the claimant that closing the store earlier would not be possible. Since resigning from his employment on December 1, 2023, the claimant has had no further contact with the employer.

The claimant's administrative records indicate that the claimant filed his original claim for benefits with an effective date of December 31, 2023. Since filing his original claim, the claimant has filed weekly-continued claims for two weeks between December 31, 2023 and January 13, 2024, but has received no unemployment insurance benefits. The employer did participate in the fact-finding interview.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit his employment without good cause attributable to the employer. Benefits are denied.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the employment relationship accompanied by an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In this case, the claimant's verbal resignation to the store manager is both evidence of the claimant's intention to sever the employment relationship and an overt act carrying out his intention. The employer has established that the claimant, not the employer, ended the employment relationship. As such, I find that the claimant quit his employment.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). If the claimant fails to meet their burden, the separation from employment is disqualifying.

Iowa Admin. Code r. 871-24.25(2), (3), (6), (18), (22) and (37) provide:

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:

(2) The claimant moved to a different locality.

(3) The claimant left to seek other employment but did not secure employment.

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

(18) The claimant left because of a dislike of the shift worked.

(22) The claimant left because of a personality conflict with the supervisor.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

In order for the claimant to demonstrate that his leaving was with good cause attributable to the employer, he must demonstrate that his working conditions were intolerable, detrimental, or unlawful, or that he was subjected to a substantial change in the terms of his contract of hire. The claimant has not demonstrated as much. While earlier in the claimant's employment he was the victim of harassment, the claimant reported the issue to the employer, the employer took action against the employees committing the harassment, and the claimant testified that the harassment did not occur at the second store location. Further, while the claimant may have been upset with the store manager's lax management style and believed that several employees did not put forth sufficient effort, the evidence does not demonstrate that the store manager's conduct amounted to an unsafe, unlawful, intolerable, or detrimental working environment.

Finally, to the extent that the claimant quit his employment because he purchased a new house and he wanted to find employment closer to his new home, his decision to move was a personal decision and adjusting to a longer commute is a matter of personal responsibility that is not attributable to the employer. The employer was not obligated to accommodate the claimant's

request to close the store and end his shifts earlier. Taken together, while the claimant may have had good personal reasons for leaving the employment, he has not demonstrated his reasons were good-cause reasons attributable to the employer according to Iowa law. As such, benefits must be denied.

Because the claimant has received no unemployment insurance benefits, the issues of overpayment, repayment, and charges are moot.

**DECISION:**

The January 25, 2024 (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left his employment on December 1, 2023, without good cause attributable to the employer. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The issues of overpayment, repayment, and charges are moot.



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Patrick B. Thomas  
Administrative Law Judge

March 4, 2024  
Decision Dated and Mailed

pbt/scn

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: eab.iowa.gov**

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.

**AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.