

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH S BATTERSON
Claimant

APPEAL NO. 11A-UI-14920-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROMPER STOMPERS LLC
Employer

**OC: 10/09/11
Claimant: Appellant (4-R)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Sarah Batterson filed a timely appeal from the November 7, 2011, reference 01, decision that denied benefits. After due notice was issued, an in-person hearing was held in Dubuque on March 1, 2012. Ms. Batterson participated. April Carner represented the employer. Exhibit One was received into evidence.

ISSUE:

Whether Ms. Batterson separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sarah Batterson was employed by Romper Stompers child care center as a part-time assistant teacher from November 2010 until October 3, 2011, when she voluntarily quit. Ms. Batterson's immediate supervisor was April Carner, second shift supervisor. The child care center is owned and operated by Rene Krier.

Ms. Batterson's last day in the employment was fairly uneventful. The center had a lower than usual number of children. Ms. Batterson appeared for work at 2:00 p.m. After dinner, around 6:00 p.m., Ms. Carner told Ms. Batterson that it would be an early day and that she could go home. Ms. Batterson said okay and left. Ms. Batterson returned with the following written resignation, which she placed on the owner's desk:

Dear Rene,

I am resigning my position as an assistant teacher at Romper Stompers effective immediately. I apologize for the short notice but I have decided to pursue other opportunities that will put me in a better position financially. Please mail my final paycheck and tax forms to:

[address omitted by administrative law judge]

Sarah Batterson

On Monday, September 26, the employer had received a call from any angry mother concerning Ms. Batterson's treatment of a four-year-old child who was in her care on Friday, September 23. Ms. Batterson had threatened to lock the child in the basement of the child care center as discipline. No one associated with the center had authorized Ms. Batterson's conduct or suggested to her that it might be acceptable. The employer spoke to Ms. Batterson about the incident to inquire into what had happened. The employer did not in any way mistreat Ms. Batterson in the process. Ms. Batterson's quit came a week later.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 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). 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. See 871 IAC 24.25.

This case comes down to the credibility of the witnesses and Ms. Batterson's written resignation. The substance of the resignation is inconsistent with Ms. Batterson's assertion that she was given the choice of resigning or being discharged from the employment. The written resignation contains an *apology* for resigning on short notice and specifically references a decision to leave the employment to pursue a *better paying* position. One just does not find these elements in a written resignation provided in lieu of discharge from the employment. The administrative law judge concludes that most of Ms. Batterson's testimony was a complete fabrication.

The administrative law judge notes that prior to the hearing, as Ms. Batterson was moving toward the hearing room with her friend, she appeared to be having something that looked like a mild anxiety attack. Ms. Batterson was breathing audibly and making moaning sounds as if she were about to face her doom. While the administrative law judge is empathetic to those who suffer from mental health issues, and took steps to help Ms. Batterson feel at ease during the hearing, Ms. Batterson's actions as she was entering the hearing suggested emotional issues that might factor in her credibility. The administrative law judge also notes that Ms. Batterson brought along an older friend who appeared to have written answers for Ms. Batterson to read during the hearing. But the administrative law judge also notes that Ms. Batterson appeared to have no problem providing testimony once the hearing began.

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.

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). 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. See 871 IAC 24.25.

The evidence in the record indicates that Ms. Batterson voluntarily quit to pursue other employment. Ms. Batterson's voluntary quit was for personal reasons and not for good cause attributable to the employer. Ms. Batterson is disqualified for benefits *based on wages earned through this employment* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Batterson.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits, may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Because the employment Ms. Batterson quit was part-time, Ms. Batterson remains eligible for reduced benefits based on base period wages credits earned from employment other than Romper Stompers, provided she is otherwise eligible. This matter will be remanded to the Claims Division for redetermination of Ms. Batterson's eligibility for *reduced* benefits.

DECISION:

The Agency representative's November 7, 2011, reference 01, decision is modified as follows. The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The claimant is disqualified for benefits *based on wages earned through this employment* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. The claimant remains eligible for reduced benefits based on base period wages credits earned from employment other than Romper Stompers, provided she is otherwise eligible. This matter will be remanded to the Claims Division for redetermination of the claimant's eligibility for *reduced* benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw