

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

QUENTIN T METZGER
Claimant

APPEAL NO. 13A-UI-07447-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOUTH OF THE BORDER INC
Employer

OC: 09/02/12
Claimant: Respondent (5)

871 IAC 24.1(113)a – Layoff
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 20, 2013, reference 03, that awarded benefits to the claimant stating he was still employed part time or on call. A telephone hearing was held on July 29, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUES:

Was the claimant laid off due to lack of work?

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

FINDINGS OF FACT:

The claimant worked part time for the employer as a cook in the Diamond Dave's restaurant in Muscatine from February 4, 2013, to June 8, 2013. The employer informed the claimant and other employees that it was closing the restaurant and would be reopening a new restaurant in the Muscatine mall. The claimant and the employer agreed that the claimant will be working in the new restaurant when it opens.

The claimant was offered the chance to work at another restaurant owned by the employer, Maid-Rite, in Milan, Iowa, until the new restaurant opens up. This would involve a 35-mile one-way commute for the claimant. He declined because the commute would create personal hardship for the claimant.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The 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. On the other hand, a claimant who stops working due to the closure of the business where the claimant was working is considered laid off due to lack of work. 871 IAC 24.1(113)a.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

To the extent that the claimant's declining to work in the restaurant in Milan can be considered a voluntary quit of continuing employment, the claimant had good cause to decline the employment because it would involve a substantial change in the terms of employment.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

DECISION:

The unemployment insurance decision dated June 20, 2013, reference 03, is modified with no change in the outcome. The claimant was either laid off or quit with good cause. In any event, the claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs