

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEE KIBLER
Claimant

APPEAL NO: 09A-UI-16832-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEXAS ROADHOUSE HOLDINGS LLC
Employer

OC: 09/20/09
Claimant: Respondent (3/R)

Iowa Code section 96.5-1 - Voluntary Quit
871 IAC 24.27 - Voluntary Quit of Part-Time Employment

STATEMENT OF THE CASE:

Texas Roadhouse Holdings, LLC (employer) appealed an unemployment insurance decision dated October 27, 2009, reference 02, which held that Lee Kibler (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 14, 2009. The claimant participated in the hearing. The employer participated through Tim Starks, Kitchen Manager and employer representative Joseph Haist. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from his part-time employment qualifies him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time line cook from October 6, 2008 through December 31, 2008. He voluntarily quit on December 31, 2008 because he was going to school full-time and the employer was giving him too many hours. The claimant did not give notice to the employer; he stopped reporting to work and was finally terminated in the employer's system due to job abandonment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits.

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(26) 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:

(26) The claimant left to go to school.

The claimant has the burden of proving that the voluntary quit was for a good reason that would not disqualify him. Iowa Code section 96.6-2. He quit because he was getting too many hours and it was interfering with his school. The claimant may have had good personal reasons to quit his employment but his separation was not attributable to the employer.

However, an individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. Benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27.

Based on this regulation, this matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits when the wage credits the claimant earned while working for the employer are not used in determining the claimant's monetary eligibility or his maximum weekly benefit amount.

DECISION:

The unemployment insurance decision dated October 27, 2009, reference 02, is modified in favor of the respondent. The claimant voluntarily quit his part-time employment for disqualifying reasons. Therefore, the employer's account will not be charged. This matter is remanded to

the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits and to determine what his maximum weekly benefit amount is when the wage credits the claimant earned from the employer are not taken into consideration to determine these two issues.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs