

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA D BELVILLE
Claimant

APPEAL NO. 13A-UI-10230-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NPC INTERNATIONAL INC
Employer

OC: 08/04/13
Claimant: Respondent (4-R)

Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 29, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 2, 2013. Claimant Joshua Belville participated. David Bronstein represented the employer and presented additional testimony through Shelly Dowding.

The parties stipulated that the employer did not participate in the August 28, 2013 fact-finding interview.

ISSUE:

Whether Mr. Belville separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Joshua Belville was employed by NPC International, Inc., d/b/a Pizza Hut as a part-time delivery driver from December 2012 and last performed work for the employer on August 9, 2013. From March 2013, Mr. Belville worked at the employer's Bettendorf store where David Bronstein was the General Manager and Shelly Dowding was a Shift Manager. Joe Schneckloth also worked at that store as a cook.

On August 9, 2013, Mr. Belville and Mr. Schneckloth got into a disagreement about a customer's pizza order after Mr. Belville took an order for a pan pizza. Mr. Schneckloth told Mr. Belville, "What the hell are you doing? We don't have any pan dough. You need to call them back right now." Mr. Belville responded, "Fuck you, I'm done." Mr. Belville then threw his delivery money on the counter. Mr. Belville said, "I'm out of here." Ms. Dowding was present in the restaurant at the time of the incident, but had been at the cash register waiting on a customer at the start of the disagreement. Ms. Dowding heard the profane exchange between Mr. Belville and Mr. Schneckloth. Ms. Dowding witnessed the money tossing, Mr. Belville's

announcement, and his departure before the scheduled end of his shift. Mr. Belville was scheduled to work to 9:30 p.m., but left around 8:30 p.m.

At 8:42 p.m. on August 9, Mr. Belville sent a text message to Mr. Bronstein, ""I'm leaving can't stand Joe." Mr. Bronstein telephoned Mr. Belville 10 to 15 minutes later. Mr. Belville told Mr. Bronstein that he needed a break and that he only wanted to work Sundays. Mr. Belville usually worked on the weekends and one additional evening during the week. The conversation ended with both sides under the belief that they had resolved the situation. However, Mr. Bronstein was under the belief Mr. Belville would be returned to work as scheduled. Mr. Belville was under the belief that the he would only be working Sundays.

Mr. Belville was on the schedule to work Saturday, August 10, 2013, from 4:00 p.m. to 9:30 p.m. At 3:54 p.m., Mr. Bronstein sent Mr. Belville a text message, "You're working tonight right?" Mr. Belville immediately responded, "I'm only working Sundays unless Joe isn't there." Mr. Bronstein sent a reply, "I guess you don't need to come back then."

Mr. Belville established a claim for unemployment insurance benefits during the week that ended August 10, 2013, but did not immediately claim benefits.

Mr. Belville next made contact with Mr. Bronstein on August 25, 2013. Mr. Belville sent a text message asking whether he could return to the employment. Mr. Bronstein did not respond to the message.

To date, Mr. Belville has received \$540.00 in benefits for the four-week period of August 25, 2013 through September 21, 2013. Mr. Belville's weekly benefit amount is \$135.00.

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.

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(6), (18), (21) 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:

(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.

(21) The claimant left because of dissatisfaction with the work environment.

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 Mr. Belville voluntarily quit the part-time employment without good cause attributable to the employer when he unilaterally substantially changed the conditions of the employment and refused to work any days but Sunday. Mr. Belville did so due to his inability to work with another employee with whom there was mutual disrespect. The mutually disrespectful behavior did not amount to intolerable or detrimental working conditions that would prompt a reasonable person to leave the employment. See Iowa Admin. Code section 871 IAC 24.26(4). The employer reasonably concluded that Mr. Belville had quit the employment when he refused to work his regular shifts other than Sundays. Prior to the text message exchange on August 10, 2013, Mr. Belville had already announced that he was "done" with the employment on August 9, 2013, prior to storming out of the workplace before the end of his shift.

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 his 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 Mr. Belville voluntarily quit the part-time employment without good cause attributable to the employer, he is disqualified for benefits *based on base period wages from Pizza Hut* until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits. However, because the quit was from part-time employment, Mr. Belville remains eligible for *reduced* benefits based on base period wages from employers, provided he meets all other eligibility requirements.

This case could have been analyzed in the alternative as a discharge, but that would also have resulted in a decision that disqualified Mr. Belville for unemployment insurance benefits. That evidence indicates that Mr. Belville and a coworker engaged in a profanity-laced argument in front of a customer on August 9, 2013. The evidence indicates that Mr. Belville threw down his delivery money and stormed out before the end of his shift. The evidence indicates that Mr. Belville refused to appear for any further shifts other than Sundays. Mr. Belville's conduct was sufficient to establish misconduct in connection with the employment under Iowa Code section 96.5(2)(a) and 871 IAC 24.23(1)(a).

This matter is remanded to the Claims Division for redetermination of Mr. Belville's eligibility for reduced benefits. That redetermination may result in a decision that Mr. Belville has been overpaid benefits. Such adjudication of the overpayment issue should factor the employer's failure to participate in the fact-finding interview.

DECISION:

The agency representative's August 29, 2013, 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 base period wages from Pizza Hut* until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits. The claimant remains eligible for *reduced* benefits based on base period wages from employers, provided he meets all other eligibility requirements.

This matter is **remanded** to the Claims Division for redetermination of the claimant's eligibility for reduced benefits. Any adjudication of an overpayment issue should factor the employer's failure to participate in the fact-finding interview.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs