

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAULA A HARRIS
Claimant

APPEAL NO. 10A-UI-15775-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

EA WILTON CAFÉ LLC
Employer

OC: 01/17/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated November 3, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 28, 2010. The claimant participated. The employer participated by Andy Alimosk, manager. The employer was represented by James Nepple, attorney at law. Brittany Darling and Lori Childers were witnesses for the employer. The record consists of the testimony of Paula Harris; the testimony of Andy Alimosk; the testimony of Brittany Darling; the testimony of Lori Childers; and Employer's Exhibits 1 through 3.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer operates a small coffee shop in Wilton, Iowa. The claimant worked as a part time waitress. Her last day of work was January 22, 2010. The claimant refused to continue working after that date. She did not show up for her scheduled shift on January 25, 2010.

On January 22, 2010, the employer discovered that \$100.00 was missing from the cash register. Mr. Alimosk, the manager, told the claimant it was missing and that he could not find out where the money had gone. The claimant later admitted to Mr. Alimosk that her daughter, who had been helping her mother at the restaurant, took the money.

On January 24, 2010, the claimant called Mr. Alimosk about her schedule. She was informed that she was scheduled to work on January 25, 2010. The claimant asked who she was working with and Mr. Alimosk told her that she would be working with another waitress named Lori Childers. The claimant refused to work with Ms. Childers. The claimant did not show up for

work on January 25, 2010. She did not come to work after that date. She was paid in full for her hours worked by payroll check and money order.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

The evidence in this case is uncontroverted that it was the claimant who initiated the separation of employment. She intended to sever the employment relationship and did so by refusing to work with another employee named Lori Childers. The employer took no action whatsoever to terminate the claimant's employment.

When asked why she quit her job, she testified first that she was shorted about \$75.00 in her paycheck because the cash register was short \$100.00. She later admitted that she was paid in full for the hours that she worked. She felt she had been accused of stealing. Mr. Alimosk testified that he did not accuse the claimant of stealing and that it was the claimant who told him that her daughter had taken the money.

She also testified that she did not want to work with Lori Childers because Mr. Alimosk told her that Lori took tip money and failed to ring up purchases. Mr. Alimosk denied he ever told the claimant that. It is simply inconceivable that any employer would hire an individual if the employer was certain she took tip money belonging to others and failed to ring up purchases. Ms. Childers had no idea why the claimant did not want to work with her. Mr. Alimosk testified that he has not had these problems with Ms. Childers.

Finally, the claimant indicated that she quit because she did not like the way Mr. Alimosk treated other employees. The administrative law judge asked the claimant to provide some specific examples and the only thing the claimant could point to was that employees would be terminated if Mr. Alimosk was not satisfied with their performance. An employer is entitled to hire and discharge employees due to unsatisfactory performance. This might have been stressful for the claimant but does not constitute good cause for quitting her job.

The claimant has failed to show that she quit for good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's decision dated November 3, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw