

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN A TAYLOR

Claimant

QDOBA OF DAVENPORT INC

QDOBA MEXICAN GRILL

Employer

APPEAL NO. 09A-UI-09167-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/07/09

Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated June 16, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 13, 2009. Claimant participated. Employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 18, 2009. The claimant was a general manager and in charge of one of the employer's locations. The claimant's supervisor informed him that he was not working out as the general manager and discharged him.

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 claimant provided convincing evidence he was discharged and did not quit. There was no evidence of misconduct.

The administrative law judge holds that the evidence has failed to establish that claimant quit. The evidence establishes he was discharged and no evidence of misconduct was presented.

DECISION:

The decision of the representative dated June 16, 2009, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/pjs