

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LYLE M MCELFRISH**

Claimant

**APPEAL NO. 11A-UI-11512-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**"SGV CONSOLIDATED LLC**

**"PIZZA CHEF**

Employer

**OC: 07/31/11**

**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated August 23, 2011, reference 01, which denied unemployment insurance benefits finding the claimant voluntarily quit employment without good cause attributable to the employer. After due notice, a telephone hearing was held on September 27, 2011 at which time the claimant participated personally. The employer participated by Mr. Gregory Tetter, Company Owner.

**ISSUE:**

The issue is whether the claimant quit employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Lyle McElfresh was employed by Pizza Chef from November 12, 2008 until July 27, 2011 when he quit his job by refusing to continue working. Mr. McElfresh was employed as a full-time order taker and pizza preparation person. The claimant was paid by the hour. His immediate supervisor was Steven Tetter, Store Manager and the son of the company owner. One other individual was employed at the facility.

On July 27, 2011, Mr. McElfresh's starting time had been delayed by the employer due to lack of business. The claimant was called in at approximately 6:00 p.m. that evening and began working. After approximately one and one-half hours the store manager, Steven Tetter, returned from making a delivery and stated to the claimant that he needed to talk to him about some "complaints." The manager had just returned from making delivery to a customer who had complained and Mr. McElfresh realized that the individual to whom the pizza was delivered was a friend of the manager and had often complained. The claimant believed that the complaint was unjustified and it also appears that the claimant may have been more sensitive to complaints at that time, because his employment and working hours with the company had been very erratic due to slow business conditions and dramatically reduced working hours.

In response to the store manager's inquiries about the customer complaint, the claimant responded, "This is bullshit. I gave my all!" At that juncture Mr. McElfresh left the premises although the work shift had not ended clocking out at the company's time recording machine. Subsequently the claimant sent a text message to the manager inquiring as to whether he still had a job. The manager returned a text message saying that in effect to "avoid drama" the manager would get a hold of the claimant in a couple of days.

Mr. McElfresh opened a claim for unemployment insurance benefits with an effective date of July 31, 2011 and indicated at that time that the reason for his job separation was due to a "quit."

By mutual agreement the parties met on August 1, 2011 and at that time both the store manager, Steven Tetter, and the claimant expressed remorse for the events that had taken place on July 27, 2011. The store manager at that time told the claimant the decision had been made by himself, his mother and his father to "lay off the claimant." The store manager also indicated that the other remaining employee would also be "laid off." Based upon the statement made to him on August 1, 2011, Mr. McElfresh attempted to change his stated reason for job separation with Workforce Development.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first question before the administrative law judge is whether the claimant quit, was laid off, or was discharged from employment.

871 IAC 24.25 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 § 96.5.

Quitting requires an intention to terminate employment accompanied by an overt act carrying out the intent. FDL Foods, Inc. v. Employment Appeal Board, 460 N.W.2d 885, 887 (Iowa App. 1990); Peck v. Employment Appeal Board, 492 N.W. 2d 438 (Iowa Ct. App. 1992).

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employer for any reason except mandatory retirement or transfer to another establishment of the same form or for service in the armed forces.

- c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
- d. Other separations. Termination of employment for military duty lasting or expecting to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In the case at hand, Mr. McElfresh refused to continue working and left the premises prior to the end of his work shift without authorization from his supervisor on the evening of July 27, 2011. The claimant was angry at that time at what he considered to be an unjustified reprimand. The claimant refused to remain until the reprimand was completed. Leaving one's workplace prior to the end of the work shift in an angry manner without authorization is an act that is commonly considered to be an overt act expressing one's intention to terminate employment. This overt act was accompanied by a text message sent by Mr. McElfresh to the manager a short time later inquiring as to whether the claimant "still had a job." This action on the part of the claimant confirms Mr. McElfresh believed that his employment may have ended by his actions. The claimant's intention to quit is further verified by Mr. McElfresh's own conclusion that he had "quit" employment by stating so when he initially filed his claim for unemployment insurance benefits.

The administrative law judge concludes based upon the evidence in the record, that the manager's later statement that the claimant was being "laid off" was in the nature of a rhetorical statement offered in the context of the parties re-establishing their personal friendship and a common remorse for the way that the employment had ended. Both Mr. McElfresh and the facility manager had worked hard and attempted to keep the business going through difficult economic issues. It is clear based upon the evidence in the record that the employer's intention was not to merely suspend Mr. McElfresh from a pay status without prejudice and to call him back to work within a short period of time. The employer's intention was to confirm only that the employment relationship was no longer continuing.

Having concluded that the claimant voluntarily quit employment, the question then becomes whether the claimant has established good cause attributable to the employer for quitting. He has not. The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Claimants are not required to give notice of intention to quit due to intolerable or detrimental or unsafe working environments if the employer had or should have had reasonable knowledge of the condition. Hy-Vee v. Employment Appeal Board, 710 N.W. 2d 1 (Iowa 2005). The evidence in the record does not establish that the claimant left employment due to intolerable, detrimental or unsafe working conditions but due to dissatisfaction with being reprimanded.

871 IAC 24.25(28) 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 § 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 § 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:

(28) The claimant left after being reprimanded.

Although Mr. McElfresh did not agree with the issues that the manager was attempting to discuss with him on the evening of July 27, 2011, the matter was work related and it was not unreasonable for a manager to address complaints with an employee.

For the reasons stated herein, the administrative law judge concludes that the claimant left employment voluntarily without good cause attributable to the employer. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated August 23, 2011, reference 01, is affirmed. Claimant quit employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and meets all eligibility requirements.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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