

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBYN HEIDT
Claimant

APPEAL NO: 07A-UI-07692-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BENNIGAN'S - CEDAR RAPIDS
Employer

OC: 05/13/07 R: 03
Claimant: Respondent (2)

Section 96.5-1 - Voluntary Quit
871 IAC 24.25(4) - Voluntary Quit Without Good Cause

STATEMENT OF THE CASE:

Bennigan's - Cedar Rapids (employer) appealed an unemployment insurance decision dated August 1, 2007, reference 06, which held that Robyn Heidt (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 October 1, 2007. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Lance Warner and employer representative Kelen Anderson. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the party, 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 employment qualifies her 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 server from November 30, 2006 through June 16, 2007. The employer's attendance policy provides an employee is considered a voluntary quit if she is a no-call/no-show for three consecutive workdays. The claimant was a no-call/no-show for three consecutive work days on June 9, June 15 and June 16. She was considered to have voluntarily quit her employment.

The claimant filed a claim for unemployment insurance benefits effective May 13, 2007 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code section 96.5-1.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated her intent to quit and acted to carry it out by failing to call or report to work for three consecutive work days.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was deemed a voluntary quit on June 16, 2007 after three days of no-call/no-show. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. She claimant failed to participate in the hearing and there is no evidence to establish that she quit with good cause attributable to the employer. Benefits are therefore denied.

DECISION:

The unemployment insurance decision dated August 1, 2007, reference 06, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times

her weekly benefit amount, provided she is otherwise eligible. There is no overpayment as a result of this decision.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs