

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L SCHREINER
Claimant

APPEAL NO: 09A-UI-02320-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES
Employer

OC: 12/07/08

Claimant: Respondent (4)

Section 96.5-1 – Voluntary Leaving/Requalification

STATEMENT OF THE CASE:

Fareway Stores, Inc. (employer) appealed a representative's February 3, 2009 decision (reference 03) that concluded David L. Schreiner (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 9, 2009. The claimant participated in the hearing. Garrett Piklapp appeared on the employer's behalf and presented testimony from one other witness, Dale Jones. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision modifying the representative's decision and allowing the claimant benefits.

ISSUE:

Did the claimant voluntarily quit, and if so is he disqualified from receiving unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on August 6, 2007. He worked part time (approximately 25 to 30 hours per week) as a clerk/cashier in the employer's Iowa City, Iowa store. His last day of work was June 7, 2008.

The claimant was next scheduled for work on June 10. The claimant had become ill the prior day and on the early morning of June 10 borrowed a neighbor's phone and made a call for an ambulance and a call to the employer to indicate he would be absent that day. He spent at least one night in the hospital. When he was released, he did not recontact the employer because he assumed he would be discharged. The claimant had previously been given written warnings for attendance on April 8 and May 17, 2008. However, the employer had previously excused the claimant's absences for which he had a medical excuse. The employer did not know what the claimant's situation was, and when he had not recontacted the employer by the end of the month, he was removed from the system.

The claimant established an unemployment insurance benefit year effective December 7, 2008. His weekly benefit amount was calculated to be \$216.00. After June 10 but before December 7, 2008 the claimant had earned at least \$2,160.00 in wages from other employers.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

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. The rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as where an employee assumes he is going to be discharged, although he was not told by the employer that in fact discharge will occur, but the employee yet ceases reporting for available work. 871 IAC 24.25.

The claimant failed to return to work even though he was not told he was discharged and in fact the employer had not determined to discharge him; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. The claimant has not satisfied that burden.

However, the administrative law judge further concludes that the claimant has requalified for benefits since the separation from this employer by working in and being paid wages for insured work equal to ten times his weekly benefit amount. Iowa Code § 96.5-1-g. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The representative's February 3, 2009 decision (reference 03) is modified in favor of the appellant. The claimant voluntarily left his employment without good cause attributable to the employer, but has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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