

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JOHN J JAYNE**  
Claimant

**P J IOWA LC**  
Employer

**APPEAL NO. 21A-UI-06151-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/03/21  
Claimant: Respondent (4R)**

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Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Admin. Code r. 871-24.27 – Voluntary Quit from Part-time Employment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 12, 2021, reference 01, decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged, based on the deputy's conclusion that the claimant was discharged for no disqualifying reason on October 23, 2020. After due notice was issued, a hearing was held on May 5, 2021. The claimant participated. Angela Mason represented the employer. Exhibits 1 through 4 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX and WAGE-A. The administrative law judge took official notice of the fact-finding materials for the purpose of determining whether the employer participated and, if not, whether the claimant engaged in fraud or misrepresentation in connection with the fact-finding interview.

**ISSUES:**

Whether the claimant voluntarily quit the part-time, supplemental employment without good cause attributable to the employer.

Whether the claimant was discharged for misconduct in connection with the employment.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by P J Iowa, L.C., doing business as Papa John's, as a part-time delivery driver at the employer's store on 16<sup>th</sup> Avenue Southwest in Cedar Rapids. The claimant began the employment in February 2020 and last performed work for the employer on October 23, 2020. The claimant worked a 5:00 p.m. to 8:00 p.m. shift. The claimant generally worked 10 to 15 hours per week. The claimant was paid a \$7.25 hourly wage plus mileage. The claimant also received customer tips. The claimant used his own vehicle for deliveries and was required to maintain a working vehicle as a condition of the employment. Jaylene Torrez was General Manager at the 16<sup>th</sup> Avenue location during the period of the claimant's employment. Ms. Torrez is no longer with the employer. Scott Golding supervised the delivery drivers and reported to Ms. Torrez.

After the claimant completed his shift on October 23, 2020, he was next scheduled to work on October 26, 2020 for a 5:00 p.m. to 8:00 p.m. shift. The claimant did not report for the October 26 shift or for additional shifts on October 28, October 30, November 2, November 4 and November 6. On the morning of October 26, 2020, the claimant was in a motor vehicle collision that totaled his truck. The claimant did not have access to another vehicle. The claimant notified Mr. Golding of his circumstances. Mr. Golding told the claimant he would forward the information to Ms. Torrez.

The claimant remained in contact with Mr. Golding regarding the claimant's effort to secure another vehicle, but the claimant did not secure a vehicle during the two weeks that included the six shifts between October 26 and November 6, 2020. The employer asserts the employer offered the claimant "inside work," but that the claimant declined the inside work. The claimant cannot recall whether Mr. Golding offered him "inside work," but adds that he would have declined the offer because he had not previously done that type of work.

At some point after November 8, 2020, the claimant spoke with Scott Golding, who advised the claimant that the employer deemed the employment terminated. By that time, the employer had ceased scheduling the claimant for additional shifts. Mr. Golding invited the claimant to reapply. The claimant had decided not to return to the delivery driver work.

During the period when the claimant was employed with P J Iowa, L.C., he was also employed full-time with Crystal Group, Inc. The claimant would start his work day at Crystal Group sometime between 6:30 a.m. and 8:00 a.m. and would finish his shift at 4:00 p.m. The claimant worked a Monday through Friday schedule at Crystal. The claimant continued to work at Crystal after the collision that totaled his vehicle. The claimant's wage at Crystal was \$17.40 an hour for a 40-hour week. The P J Iowa employment was part-time, supplemental in nature.

The claimant established an original claim for benefits that was effective January 3, 2021. P J Iowa, L.C. and Crystal Group, Inc. are the base period employers. Iowa Workforce Development set the claimant's weekly benefit amount for regular benefits at \$493.00. The claimant received that amount for the week that ended January 9, 2021 and for the week that ended March 27, 2021. The claimant also received \$300.00 in Federal Pandemic Unemployment Compensation for each of those two weeks.

On February 10, 2021 an Iowa Workforce Development Benefits Bureau deputy held a scheduled fact-finding interview that addressed the claimant's separation from the employment. In the SIDES protest, the employer had designated Angela Mason, District Manager, as the employer representative for the fact-finding interview. The deputy attempted to reach Ms. Mason for the fact-finding interview, but was unable to reach her at the number provided. The deputy's notes indicate the deputy relied upon the information the employer provided in the SIDES protest, which was limited to dates of employment and a cursory narrative: "willfully quit without giving notice." The claimant participated in the fact-finding interview and provided a statement to the deputy. The claimant denied that he had quit the employment. The claimant stated by he was in an auto collision in which his vehicle was totaled, that he was unable to return to work following the auto collision, and that the employer's policy is to terminate employees who are off the schedule for two weeks.

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

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

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

a. Layoffs. A layoff is a suspension from pay status 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 employee for any reason except mandatory retirement or transfer to another establishment of the same firm, 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. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 Iowa Administrative Code rule 871-24.25.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 claimant who separates from employment due to a loss of transportation is presumed to have voluntarily quit the employment without good cause attributable to the employer unless the employer agreed to provide transportation. Iowa Admin. Code r 871-24.25(1).

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning 10 times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See Iowa Admin. Code r. 871-24.27.

The weight of the evidence in the record establishes a voluntary quit without good cause attributable to the employer. The employment ended because the claimant ceased appearing for shifts due to his loss of transportation. The employer continued to have work available for the claimant and waited a reasonable time, two weeks, before concluding the employment was done. During that time, the claimant was absent from for six consecutive shifts due to the lack of transportation. When the claimant made contact with Mr. Golding after November 8, 2020, it was not for the purpose of returning to the employment. The claimant was still without a vehicle for use in the employment. The claimant had decided not to return to the employment. Based on the voluntary quit, the claimant is disqualified for *benefits that are based on this base period*

*employment* until he has worked in and been paid wages equal to 10 times his weekly benefits amount. This employer's account will not be charged for future benefits. The claimant remains eligible for benefits *that are based on wages from the claimant's other, full-time employment*, provided the claimant meets all other eligibility requirements. This matter will be remanded to the Benefits Bureau for redetermination of the claimant's weekly benefit amount. That redetermination may result in a decision that the claimant was overpayment benefits.

In light of the need to remand for redetermination of the weekly benefit amount, the present decision will not decide whether the claimant was overpaid benefits, whether the claimant must repay benefits, whether the employer participated in the fact-finding interview within the meaning of the law, or whether the employer's account may be charged for benefits deemed to be overpaid benefits. Those issues should be addressed as part of the remand.

**DECISION:**

The February 12, 2021, reference 01, decision is modified in favor of the employer/appellant as follows. The claimant voluntarily quit the part-time, supplemental employment without good cause attributable to the employer. The claimant is disqualified for *benefits that are based on this base period employment* until he has worked in and been paid wages equal to 10 times his weekly benefits amount. This employer's account will not be charged for future benefits. The claimant remains eligible for benefits *that are based on wages from the claimant's other, full-time employment*, provided the claimant meets all other eligibility requirements.

This matter is **remanded** to the Benefits Bureau for redetermination of the claimant's weekly benefit amount. The remand should also address whether the claimant was overpaid benefits, whether the claimant must repay benefits, whether the employer participated in the fact-finding interview within the meaning of the law, and whether the employer's account may be charged for benefits deemed to be overpaid benefits.



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James E. Timberland  
Administrative Law Judge

September 13, 2021  
Decision Dated and Mailed

jet/scn