

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ESTERDAY, ANITA, D
Claimant

APPEAL NO. 11A-UI-05200-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK TRIP INC
Employer

**OC: 03/13/11
Claimant: Appellant (4)**

Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

Anita Esterday filed a timely appeal from the April 13, 2011, reference 02, decision that denied benefits in connection with a June 22, 2010 separation from Kwik Trip, Inc. After due notice was issued, a hearing was held on May 16, 2011. Karen Swenson, Store Leader, represented the employer. Ms. Esterday provided a telephone number for the hearing, but was not available at that number at the time the hearing. Ms. Esterday submitted written notice that she would be unavailable for the hearing and provided proposed exhibits, including a written statement, in lieu of testimony. Exhibits One, Two, A, B and C were received into evidence.

ISSUES:

Whether the claimant voluntarily quit the employment with Kwik Trip for good cause attributable to the employer.

Whether the claimant voluntarily quit the employment with Kwik Trip for the sole purpose of accepting other or better employment and performed work for the new employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Anita Esterday was employed by Kwik Trip as a part-time retail clerk for six months until June 22, 2010, when she voluntarily quit to accept employment with Meskwaki Trading Post. Ms. Esterday started the new employment on June 28, 2010 and performed work for the new employer. At the time Ms. Esterday separated from Kwik trip, that employer continued have work available for her.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, *and the individual performed services in the new employment*. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

[Emphasis added.]

The administrative law judge must follow the plain language of the statute.

The weight of the evidence in the record establishes that Ms. Esterday did indeed voluntarily quit the employment with Kwik Trip for the sole purpose of accepting other employment at Meskwaki Trading Post and did indeed perform work for the new employer. The voluntary quit from Kwik Trip was without good cause attributable to that employer and Kwik Trip's account with Iowa Workforce Development will not be charged for benefits paid to Ms. Esterday. Because Ms. Esterday quit the employment with Kwik Trip to accept other employment and performed work for the new employer, her separation from Kwik Trip would not disqualify her for unemployment insurance benefits. Ms. Esterday is eligible for unemployment insurance benefits, provided she is otherwise eligible.

DECISION:

The Agency representatives April 13, 2011, reference 02, decision is modified as follows. The claimant voluntary quit from Kwik Trip without good cause attributable to that employer to accept other employment. Kwik Trip's account will not be charged for benefits paid to Ms. Esterday. The claimant is eligible for unemployment insurance benefits, provided she is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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