

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMES M MITCHELL
Claimant

SLB OF IOWA LC
Employer

APPEAL NO. 21A-UI-10748-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
Claimant: Respondent (1R)**

Iowa Code Section 96.5(1) - Layoff

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 31, 2021, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 1, 2021. Claimant, James Mitchell, participated. Karen Beard represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO, KPYX, DBIN, NMRO, the March 29, 2021 fact-finding documents, the March 31, 2020 SIDES protest, the March 23, 2021 SIDES protest, and the PUA determination.

ISSUE:

Whether the claimant was discharged for misconduct, voluntarily quit for good cause attributable to the employer, or was laid off.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by SLB of Iowa, L.C., doing business as Panera Bread, as a part-time delivery driver at the employer's Iowa City restaurant and bakery. The claimant began the employment in March 2019 and last performed work for employer on March 18, 2020. The claimant averaged 24 hours per week. The claimant usually worked three to four shifts per week. The claimant would start his shift sometime between 3:00 p.m. and 5:00 p.m. and would work until the restaurant closed. The claimant provided his own vehicle for use in making deliveries. As a delivery driver, the claimant was also assigned secondary duties such as bussing tables and assisting with food preparation. Toward the end of February or beginning of March 2020, the claimant was having transportation issues, cut back on delivery duties and received training in making sandwiches. The claimant's final wage was \$10.65 plus tips. General Manager Angelica Brown and Assistant General Manager Amanda Hatfield were the claimant's supervisors. Ms. Hatfield is still with the employer. Ms. Brown recently separated from the employer.

On March 17, 2020, Governor Reynolds issued a State Public Health Emergency Declaration in which she directed Iowa restaurants to immediately discontinue in-person dining services to

slow community spread of COVID-19. The employer experienced a substantially reduction in labor needs. The employer solicited layoff volunteers. The employer told the claimant that employees would either be laid off or would receive reduced work hours. The claimant acquiesced in being laid off. The layoff was effective March 18, 2020. The employer characterized the layoff as temporary. After the employer solicited volunteers for layoff, the employer proceeded with involuntary layoffs of some but not all employees. The employer does not know whether the claimant would have been included in the involuntary layoff.

On March 24, 2020, Karen Beard, Human Resources Manager, sent a letter to the claimant. The letter stated that the claimant was in temporary layoff status through June 14, 2020, but that the duration of the layoff could be shortened or lengthened at the employer's discretion. The letter stated the employer hoped to recall the claimant within 12 weeks, but the employer could not determine when business conditions would improve and when the employer would again need the claimant's services. The claimant received and reviewed the employer's letter.

On April 28, 2020, Ms. Brown contacted the claimant to inquire whether the claimant was ready to return to work. The claimant told Ms. Brown that he was not coming back to work just yet. The claimant resides with his mother. The claimant was concerned about potential exposure to COVID-19 and the potential of his mother becoming ill with COVID-19. The claimant testified at the appeal hearing that his mother has multiple health issues.

On May 2, 2020, Ms. Brown called the claimant. During that contact, Ms. Brown told the claimant that if he was not ready to return to work he would need to sign a leave of absence request. The claimant stated that he did not feel safe, was not ready to return, and would sign a leave of absence request. Shortly thereafter, the claimant reported to the restaurant and signed the leave of absence request. While at the restaurant, the claimant observed that the restaurant staff was adhering to Centers for Disease Control (CDC) recommended COVID-19 precautions that included wearing masks and not allowing customers into the restaurant.

On May 15, 2020, the District Manager directed Ms. Brown to recall all employees and to advise employees that employment would be terminated if they did not return. Ms. Brown promptly made contact with the claimant by telephone. The claimant declined to return to the employment and did so with the understanding that the employment would be deemed terminated.

There was no further contact with the parties outside of unemployment insurance proceedings.

The claimant established an original claim for benefits that Iowa Workforce Development deemed effective March 15, 2020. IWD set the weekly benefit amount at \$481.00. The claimant received \$7,245.43 in regular for the period of March 15, 2020 through July 4, 2020. For all but the last week, the weekly regular benefits were \$481.00. During the week that ended July 4, 2020, the claimant exhausted regular benefits and IWD only paid \$30.43 in regular benefits. The claimant then received \$481.00 in Pandemic Emergency Unemployment Compensation (PEUC) benefits for the 13 weeks between July 5, 2020 and October 3, 2020. The 13 weeks of PEUC benefits totaled \$6,253.00. The claimant then received \$481.00 in weekly State Extended Benefits (EB) for four weeks between October 4, 2020 and October 31, 2020. The EB benefits totaled \$1,924.00. The claimant also received \$600.00 in weekly Federal Pandemic Unemployment Compensation (FPUC) for the 17 weeks between March 29, 2020 and July 25, 2020. The FPUC benefits totaled \$10,200.00. The claimant also received \$300.00 in weekly Lost Wages Assistant Payments (LWAP) for six weeks between July 26, 2020 and September 5, 2020. the LWAP benefits totaled \$1,800.00. The claimant's benefit year expired on March 13, 2021.

The claimant established a new original claim that was effective March 14, 2020. The claimant did not receive regular benefits in connection with the new claim year. Instead, the claimant received additional PEUC benefits for the 22 weeks between December 27, 2020 through May 29, 2021. The additional PEUC benefits totaled \$10,582.00. The claimant also received \$300.00 in weekly FPUC benefits for the same 22 weeks. The new FPUC benefits totaled \$6,600.00.

In connection with the new claim year, an Iowa Workforce Development Benefits Bureau deputy attempted to conduct a cold-call fact-finding interview on March 29, 2021. The deputy connected with and interviewed the claimant. The claimant provided candid responses and did not attempt to mislead the deputy. The deputy did not connect with and did not interview the employer. The deputy considered the cursory information the employer provided in the employer's timely protest of the new claim year.

The claimant applied for but was denied Pandemic Unemployment Assistance (PUA).

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides 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.

The issues of whether there was a layoff, whether there was a voluntary quit without good cause attributable to the employer, and whether the claimant was discharged for misconduct in connection with the employment were each properly before the administrative law judge, based on the appeal from the March 31, 2021, reference 01, decision and the notice provided in the hearing notice. The issues of whether the claimant refused recall to suitable employment without good cause and whether the claimant was available for work within the meaning of the law were not properly before the administrative law judge. Accordingly, the administrative law judge does not have jurisdiction to rule on those additional issues. The evidence establishes

that the claimant was laid off effective March 18, 2020. The layoff, in contrast to a voluntary quit without good cause attributable to the employer or a discharge for misconduct in connection with the employment, would not disqualify the claimant for unemployment insurance benefits or relieve the employer's account of liability for benefits. See Iowa Code section 96.5(1) and (2)(a). Accordingly, based on the March 2020 layoff, the claimant is eligible for benefits, provided he meets all other eligibility requirements and the employer's account may be charged for benefits.

This matter will be remanded to the Benefits Bureau for an initial determination regarding whether the claimant refused recall to suitable work without good cause and whether the claimant has been able to work and available for work within the meaning of the law.

DECISION:

The March 31, 2021, reference 01, reference 01, decision is affirmed. The claimant was laid off effective March 18, 2020. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

This matter is **remanded** to the Benefits Bureau for an initial determination regarding whether the claimant refused recall to suitable work without good cause and whether the claimant has been able to work and available for work within the meaning of the law.



James E. Timberland
Administrative Law Judge

July 19, 2021
Decision Dated and Mailed

jet/lj