

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**STEVEN R STEELE**

Claimant

**TEXAS ROADHOUSE HOLDINGS LLC**

Employer

**APPEAL 17A-UI-13485-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/03/17**

**Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 20, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 26, 2018. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer was represented by Thomas Kuiper, hearing representative. Tilinia Davidson, unemployment insurance consultant, testified on the issue of fact-finding participation only. Kitchen manager Marty Konzen, testified on the separation. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant voluntarily quit the employment with good cause attributable to the employer?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a server's assistant and was separated from employment on August 20, 2017, when he quit the employment. Continuing work was available. Prior to quitting, the employer reported the claimant had missed work and often had his mother call in to report his absences. On August 20, 2017, the claimant went to the employer and spoke to Jacob Studer, managing partner. At that time, he stated he had too much going on with his schooling and family life, and needed to quit. Separation thereby ensued.

The administrative record reflects that claimant has a weekly benefit amount (WBA) of \$88.00 but has not received unemployment benefits, since filing a claim with an effective date of December 3, 2017. The administrative record also establishes that the employer did not

participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. The employer did not participate because it did not receive the notice of fact-finding interview, until December 20, 2017, after the scheduled December 19, 2017 call. Ms. Davidson was out of the office on December 19, 2017 and therefore unable to respond to any voicemail in conjunction with the interview.

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

As a preliminary matter, the administrative law judge concludes the claimant voluntarily quit the employment and was not discharged.

An unemployed person who meets the basic eligibility criteria receives benefits unless they are disqualified for some reason. Iowa Code § 96.4. Generally, disqualification from benefits is based on three provisions of the unemployment insurance law that disqualify claimants until they have been reemployed and they have been reemployed and have been paid wages for insured work equal to ten times their weekly benefit amount. An individual is subject to such a disqualification if the individual (1) “has left work voluntarily without good cause attributable to the individual’s employer” Iowa Code § 96.5(1) or (2) is discharged for work –connected misconduct, Iowa Code § 96.5(2) a, or (3) fails to accept suitable work without good cause, Iowa Code § 96.5(3).

The first two disqualifications are premised on the occurrence of a separation of employment. To be disqualified based on the nature of the separation, the claimant must either have been fired for misconduct or have quit but not for good cause attributable to the employer. Generally, the employer bears the burden of proving disqualification of the claimant. Iowa Code § 96.6(2). Where a claimant has quit, however, the claimant has “the burden of proving that a voluntary quit was for good cause attributable to the employer pursuant to Iowa Code section § 96.5(1). Since the employer has the burden of proving disqualification, and the claimant only has the burden of proving the justification for a quit, the employer also has the burden of providing that a particular separation was a quit. The Iowa Supreme Court has thus been explicitly, “the employer has the burden of proving that a claimant’s departure from employment was voluntary.” *Irving v. Employment Appeal Board*, 883, NW 2d 179, 210 (Iowa 2016).

*Quit not shown:* Iowa Code section § 96.5(1) provides:

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.

A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). Generally, a quit is defined to be 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.” Furthermore, 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 employer has the burden of providing that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. Based on the evidence presented, the claimant initiated the separation and had he not, continuing work was available. Therefore, the administrative law judge concludes the claimant voluntarily quit (and was not discharged).

**The next issue is whether the claimant quit for good reasons attributable to the employer.**

Iowa Admin. Code r. 871-24.25(23) 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

Iowa Admin. Code r. 871-24.25(26) 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:

(26) The claimant left to go to school.

Iowa Admin. Code r. 871-24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

The claimant has the burden of proof to establish he quit with good cause attributable to the employer, according to Iowa law. 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. 871 IAC 24.25. "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the

circumstances that lead to an employee's quit in order to attribute the cause for the termination.”  
*Id.*

The undisputed evidence presented is the claimant voluntarily quit the employment due to ongoing family and school issues. The claimant did not attend the hearing to refute the employer's credible testimony. Therefore, the administrative law judge concludes that while the claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

**The final issue to resolve is whether the claimant must repay benefits he received, and whether the employer's account can be relieved of charges.**

Because the claimant's separation was disqualifying, benefits were originally allowed. However, he did not receive any benefits and therefore there is no overpayment in accordance with Iowa Code § 96.3(7). The law also states that an employer is to be charged if “the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits.” Iowa Code § 96.3(7)(b)(1)(a). Here, the employer did not receive the notice of fact-finding interview. Benefits were not allowed because the employer failed to respond timely or adequately to IWD's request for information relating to the payment of benefits. Instead, benefits were allowed because the employer did not receive the notice of fact-finding interview. Employer thus cannot be charged. Since neither party is to be charged, any potential charges for this claim should be absorbed by the fund.

**DECISION:**

The December 20, 2017, (reference 01) decision is reversed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has not been overpaid benefits. The employer's account is relieved of charges associated with the claim.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn