

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES WALSH
Claimant

SHORTS BURGER & SHINE - MARION
Employer

APPEAL 22A-UI-01103-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/07/21
Claimant: Respondent (2R)**

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On December 17, 2021, the employer, Short's Burger & Shine, filed an appeal from the December 7, 2021, (reference 01) unemployment insurance decision that allowed benefits based on a representative's determination that the claimant's quitting was with good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on February 2, 2022. Claimant, James Walsh, did not call the toll-free number listed on the notice of hearing and did not participate. Employer participated through Brittany Bazyn, General Manager. The administrative law judge took official notice of the administrative record.

The issues of benefit overpayment under Iowa Code § 96.3(7) was not properly noticed to the parties on the notice of hearing so the issues of overpayment and employer chargeability are remanded to the Benefits Bureau for investigation and determination.

ISSUES:

Did the claimant voluntarily quit his employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on December 12, 2019 as a full-time food server. Claimant last worked as a full-time server. Claimant was separated from employment on November 9, 2021, when he voluntarily quit his employment due to stress and his inability to get along with his co-workers. Brittany Bazyn, the general manager and the claimant's direct supervisor testified that the claimant would at times struggle at work and become overwhelmed by the pace. Bazyn noted that during the times he was frustrated and struggling the claimant was difficult to coach and at various times overshared his feelings and frustrations with customers seated in his section. Bazyn further stated that she working with the claimant on an as-needed basis to ensure his shifts would go smoothly and that his job was not in jeopardy. Employer also stated that other employees' found the claimant to be difficult to work with when he was under stress. The claimant voluntarily quit his employment on November 9 2021, during a stressful shift and never returned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge finds the claimant voluntarily quit his employment without good cause attributable to his employer. Benefits are denied.

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.

Iowa Admin. Code r. 871-24.25 in pertinent part 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:

(6) The claimant left as a result of an inability to work with other employees

(21) The claimant left because of dissatisfaction with the work environment.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

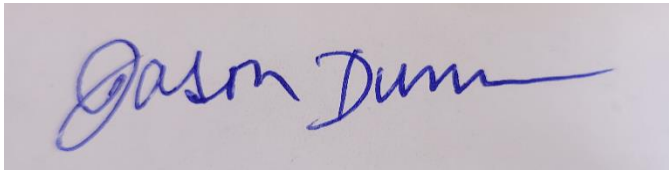
The claimant voluntarily quit his employment without any good cause attributable to the employer. He was struggling at work and was unable to keep-up the pace and inherent stressors of working in the hospitality industry. Claimant's quitting was likely a good decision for him but no good cause reason for his quitting is attributable to the employer. Benefits are denied.

DECISION:

The December 7, 2021, (reference 01) unemployment insurance decision is reversed. 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.

REMAND:

The issue of benefit overpayment and whether the employer's account shall be charged based on whether the employer participated in the fact-finding interview is remanded to the Benefits Bureau for review and determination.



Jason Dunn
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February 25, 2022
Decision Dated and Mailed

jd/mh