

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BILLIE JOE HUSTED

Claimant

APPEAL NO: 08A-UI-05477-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPTAIN KIRK'S MARINA LLC

Employer

**OC: 05/18/08 R: 04
Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Billie Joe Husted (claimant) appealed an unemployment insurance decision dated June 9, 2008, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Captain Kirk's Marina, LLC (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 25, 2008. The claimant participated in the hearing. The employer participated through owner Kirk Butler. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time cook from August 17, 2007 through May 17, 2008. She only worked Saturdays and Sundays and her last day of work was April 27, 2008. After that date, the employer's facility flooded so the claimant did not work the next weekend. She was not scheduled for the weekend of May 9, 2008 but the employer's facility was still closed. The claimant contacted the employer's wife on May 14, 2008 and was told she was scheduled to return to work at 5:00 p.m. on May 17, 2008. The employer called the claimant an hour later because he was upset she had said disparaging comments about him to his wife. The employer confronted her about that but also talked to her about some other issues, including missing food. He was not blaming or accusing the claimant but had talked to all the employees about the missing food. The claimant became defensive and the employer mentioned an incident that occurred in October 2007 when he saw her have her hand in the money bag. The claimant began crying and the employer told her to call him back when she was calmer. She expected the employer to call her back but neither one called the other. The claimant assumed she had been fired since the employer never called her and she did not report to work on May 17, 2008 or any time thereafter.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out when she failed to call or return to work on May 17, 2008 and thereafter. The claimant assumed she had been fired but no one had fired her. Where an individual mistakenly believes that she is discharged and discontinues coming to work (but was never told she was discharged), the separation is a voluntary quit without cause attributable to the employer. LaGrange v. Iowa Department of Job Service, (Unpublished Iowa Appeals 1984).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

DECISION:

The unemployment insurance decision dated June 9, 2008, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs