

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICK STARLING**  
Claimant

**APPEAL NO: 09A-UI-16250-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CIGARETTE OUTLET INC**  
Employer

**OC: 09/27/09**  
**Claimant: Appellant (1/R)**

Iowa Code § 96.5-1 - Voluntary Quit  
871 IAC 24.27 - Voluntary Quit of Part-Time Employment

**STATEMENT OF THE CASE:**

Patrick Starling (claimant) appealed an unemployment insurance decision dated October 27, 2009, reference 03, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with the Cigarette Outlet, Inc. (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 December 3, 2009. The claimant participated in the hearing. The employer participated through Debra Schneider, Supervisor and Ashanta Meyers, Manager. 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 him 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 cashier from September 8, 2008 through September 26, 2009. He spoke with Manager Ashanta Meyers on September 23, 2009 and asked about taking a couple weeks off work to find child care. Ms. Meyers spoke with her supervisor and the employer denied his request. The claimant failed to call or report to work for the next three days and was determined to have voluntarily quit effective September 26, 2009. He gave his key to a co-employee and never spoke to the employer or explained why he quit.

**REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code § 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.

871 IAC 24.25(4) 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 § 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 § 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

871 IAC 24.25(17) 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 § 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 § 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:

(17) The claimant left because of lack of child care.

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 his intent to quit and acted to carry it out when he failed to call or report to work for three consecutive days ending September 26, 2009. He voluntarily quit his employment due to lack of child care. Although the claimant denies he quit and contends he was fired for unknown reasons, the employer's evidence was more plausible and the preponderance of the evidence confirms he quit.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden. However, an individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. Benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27.

**DECISION:**

The unemployment insurance decision dated October 27, 2009, reference 03, is affirmed. The claimant voluntarily quit his part-time employment for disqualifying reasons. Therefore, the employer's account will not be charged. This matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits and to determine what his maximum weekly benefit amount is when the wage credits the claimant earned from the employer are not taken into consideration to determine these two issues.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs