

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CLINTON H WILLIAMSON**  
Claimant

**APPEAL NO. 08O-UI-11292-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KNOTTY PINE RESTAURANT & LOUNGE**  
Employer

**OC: 07/27/08 R: 03**  
**Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

K Pine LLC filed an appeal from a decision of a representative dated October 9, 2008, reference 01, which held claimant eligible for unemployment insurance benefits. A hearing was held and a decision was issued on November 5, 2008 reversing the fact-finder's decision. The matter was appealed to the Employment Appeal Board and remanded by the Appeal Board for a new hearing due to lack of notice to the claimant. The hearing was conducted by telephone conference call on December 23, 2008. Mr. Williamson participated personally. The employer participated by Megan Tooker, Attorney at Law and witnesses Sarah O'Hair, Patrick O'Hair and Phyllis O'Hair.

**ISSUE:**

The issue in this matter is whether Mr. Williamson quit employment without good cause attributable to the employer and whether the claimant has been overpaid 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 Knotty Pine Restaurant and Lounge were purchased from the claimant's parents on April 2, 2008 and Mr. Williamson continued in the position of kitchen manager on a full-time basis. His immediate supervisors were Jody and Sarah O'Hair. Mr. Williamson quit his employment with the captioned employer on July 26, 2008 after becoming angry due to difficulties and delays in serving food. Mr. Williamson believed that the prep list had not been properly followed. Sarah O'Hair noted that a number of items on the prep list had not been included by Mr. Williamson. The claimant became increasingly upset using inappropriate language in the presence of other workers, management and clients. On more than one occasion Mr. Williamson stated that he was quitting employment and made a number of negative statements towards the new management. The claimant was advised by Ms. O'Hair to resume performing his duties or leave. The claimant continued to be upset and subsequently clocked out. When Mr. Williamson's angry expression of his dissatisfaction continued in the

presence of clients and staff, the claimant was advised by Ms. O'Hair to leave or police authorities would be called.

It is the claimant's position that he was instructed to leave the premises before he indicated that it was his intention to quit.

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

The question is whether the evidence in the record establishes that Mr. Williamson left employment for reasons attributable to the employer. It does not.

The evidence in the record establishes that on the evening of July 26, 2008 numerous problems beset the kitchen staff and the claimant became increasingly angry at his inability to properly prepare and serve meals. When the claimant expressed his dissatisfaction it was pointed out that a number of items on the preparation list had not been included by the claimant. The evidence establishes that Mr. Williamson became increasingly upset and repeatedly indicated that he was quitting employment, using inappropriate language in a manner that was disruptive to staff and customers. The claimant was given the opportunity to resume his duties and continue in employment but did not do so. The claimant instead reemphasized his intention to quit and clocked out. When Mr. Williamson's anger did not subside, he was then told to leave or police authorities would be called.

Although the administrative law judge is cognizant that Mr. Williamson remembers the incident in a different manner, the administrative law judge notes that the testimony of Sarah O'Hair is corroborated by two other witnesses who were present on the evening in question.

The question in this case is not whether an employee has a right to leave employment for these reasons but whether the leaving is for good cause attributable to the employer. Based upon the evidence in the record the administrative law judge must conclude that the claimant's reason for leaving was not attributable to the employer in this instance.

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.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

- a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

- b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this states pursuant to section 602.10101.

**DECISION:**

The representative's decision dated October 9, 2008, reference 01, is reversed. The claimant voluntarily quit for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided he is otherwise eligible. The administrative law judge remands to the Claims Division for determination as to whether there has been an overpayment, the amount of the overpayment and whether the claimant will have to repay those benefits.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

css/css