

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

STEPHEN BABE
5213 ½ MORNINGSIDE AVE
SIOUX CITY IA 51106

PORTER APPLE CO
APPLEBEE'S NEIGHBORHOOD BAR
& GRILL
4101 S CARNEGIE PL
SIOUX FALLS SD 57106-2360

Appeal Number: 06A-UI-03983-B
OC: 03/12/06 R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Stephen Babe (claimant) appealed an unemployment insurance decision dated April 3, 2006, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Applebee's Neighborhood Grill & Bar (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Sioux City, Iowa on April 25, 2006. The claimant participated in the hearing. The employer participated through Rodney Rowe, Brenda Reid, Rosie Graus, Mike Tymkowicz and Tony Cote. Claimant's Exhibits A through F were admitted into evidence.

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 full-time cook from January 25, 2006 through March 15, 2006, when he voluntarily quit. He quit his employment due to intolerable and detrimental working conditions. The claimant did not feel well on March 15 because he had a severe sore throat. He worked the morning shift and then went to the doctor's office where he was prescribed an antibiotic for a bacterial infection. The claimant reported to work that afternoon even though he did not feel well but asked to leave early because of that. As he went through his shift, his eye started hurting him; it was itching and watering. The claimant asked to leave but the assistant manager would not let him leave. The claimant was quite upset so he called his family, who called the doctor's office. The doctor's office told the claimant's father that the claimant could be having an allergic reaction to the antibiotic he was taking. The claimant then told the assistant manager he was having an allergic reaction and needed to leave. The assistant manager assigned additional work to the claimant and said he could not leave until the work was done. The claimant said he was leaving anyway. The assistant manager called the local hospital and asked the symptoms of an allergic reaction. Based on his personal experience and what he was told by the hospital, the assistant manager determined the claimant was not having an allergic reaction and told him so. The claimant reacted angrily by using profanity and the assistant manager told him he could be fired for using profanity. The claimant responded by saying something like, "you can't fire me mother fucker, I quit" or "you can't fire me because I fucking already quit", after which, he left.

The following morning, the claimant went to his doctor, who determined the claimant was not having an allergic reaction but instead had "pink eye." Antibacterial eye drops were prescribed for the claimant's eye infection and he had to purchase glasses that morning since he could not wear his contacts. After getting his medicine and his glasses, the claimant called the general manager to ask about his job and was told the general manager would have to look into it. The claimant went to work to pick up his check on Friday and was directed to sign a termination report, which indicated the reason for his termination was because he walked off the job.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

Rule 871 IAC 24.25 provides that, 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. 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 denies he had the intent to quit but did walk off the job after using profanity towards his assistant manager and after he was told he would no longer have a job if he left before completing his work.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code section 96.6-2. He quit his employment because he was sick and

needed to leave work but the assistant manager would not let him go. From the evidence presented in the hearing, it appears the assistant manager intentionally harassed the claimant that evening. He ignored the claimant when the claimant was trying to talk to him, he assigned the claimant more work, and he effectively told the claimant he was lying about having an allergic reaction. While the claimant's profane responses to his assistant manager are not condoned, they are not particularly relevant since the employer denies the claimant was discharged. Furthermore, it can be assumed that the claimant's illness and subsequent frustration caused by the assistant manager contributed to the tone of his responses.

The claimant quit his employment due to intolerable and detrimental working conditions, which is considered to be a voluntary quit with good cause attributable to the employer. 871 IAC 24.26(4). He has satisfied his burden and benefits are allowed.

The employer is not a base period employer and its account is not subject to any charges during the claimant's current benefit year. If the claimant establishes a subsequent benefit year, the wage credits he earned from January 25, 2006 through March 15, 2006, would be subject to charge since the claimant quit his employment with good cause attributable to the employer.

DECISION:

The unemployment insurance decision dated April 3, 2006, reference 01, is reversed. The claimant voluntarily quit his employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits provided he is otherwise eligible.

sdb/pjs