

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW L DICKINSON**  
Claimant

**APPEAL NO. 11A-UI-01712-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NPC INTERNATIONAL INC  
PIZZA HUT**  
Employer

**OC: 12/26/10  
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated February 1, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 14, 2011. Claimant participated. Employer participated by Kathy Dewalt, Human Resource Leader; Matt Newcomb, Area Manager and Tammy Knebel, Region Manager.

**ISSUE:**

The issue in this matter is whether claimant quit for good cause attributable to employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 26, 2010. Claimant gave a two week notice of resignation. Claimant was quitting for new and better employment. Claimant resigned December 13, 2010 with his last day of work set for December 28, 2010. Claimant had a death in the family and missed two days of work. Employer was upset with claimant not showing for work and decided to let him go early. Employer allows two days funeral leave. Claimant quit for new and better employment.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of new and better employment. Claimant is allowed benefits for the week ending January 1, 2011 because employer discharged claimant early. The absences are excusable because they were due to a death in the family and properly reported. This is not misconduct. Claimant did quit for new employment which qualified him for benefits effective January 2, 2011. Employer's account shall not be charged for benefits paid on and after January 2, 2011.

Iowa Code § 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment.

871 IAC 24.25(38) 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

**DECISION:**

The decision of the representative dated February 1, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible for the

one week ending January 1, 2011 with charges to employer's account. Claimant is eligible for benefits effective January 2, 2011 with charges to the unemployment compensation fund because claimant left for new and better employment.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/pjs