

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIANE I CHINBERG**  
Claimant

**APPEAL NO. 16A-UI-05783-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMES INVESTMENTS INC**  
Employer

**OC: 05/01/16  
Claimant: Respondent (4)**

Iowa Code Section 96.5(1) – Voluntary Quit  
871 IAC 24.27 – Voluntary Quit from Part-time Employment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 17, 2016, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant voluntarily quit on April 25, 2016 for good cause attributable to the employer. After due notice was issued, a hearing was held on June 8, 2016. Claimant Diane Chinberg was not available at the telephone number she provided for the hearing and did not participate. Jill Comes, Human Resources/Payroll and co-owner, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One, Two and D-1 into evidence.

**ISSUES:**

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the quit was from part-time employment.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Diane Chinberg was employed by Comes Investment, Inc., d/b/a Pizza Hut in Perry, as a part-time cashier and cook from February 25, 2016 until April 22, 2016, when she voluntarily quit. Ms. Chinberg's immediate supervisor for most of the brief employment was Amy Brockman, Restaurant General Manager. Patricia Biondi, was the Restaurant General Manager in training. Ms. Brockman's last day as Restaurant General Manager was to be April 22, 2016. On that day, Ms. Chinberg notified the employer that she would be absent due to a family emergency. Ms. Chinberg asserted that someone had shot her daughter with a BB gun. Ms. Chinberg never returned to the employment. The employer continued to have work available for Ms. Chinberg at the time Ms. Chinberg ceased appearing for work.

Ms. Chinberg established an original claim for unemployment insurance benefits that was effective May 1, 2016. Iowa Workforce Development set Ms. Chinberg's weekly benefit amount at \$118.00. Ms. Chinberg received \$590.00 in benefits for the five-week period between May 1, 2016 and June 4, 2016. Ms. Chinberg's base period for purposes of the May 1, 2016 original claim consists of the four calendar quarters of 2015. Comes Investments, Inc., is not one of Ms. Chinberg's base period employers for purposes of the claim year that began for Ms. Chinberg on May 1, 2016. Comes Investments' employer account has not been charged for benefits paid to Ms. Chinberg.

On May 16, 2016, an Iowa Workforce Development claims deputy conducted a fact-finding interview to address Ms. Chinberg's separation from the employment. Prior to the fact-finding interview, Jill Comes, Human Resources/Payroll and co-owner, provided the Benefits Bureau with a cell phone number at which she could be reached for the fact-finding interview. However, the claims deputy transposed the last two digits in that telephone and dialed the wrong number when attempting to reach Ms. Comes for the fact-finding interview. For that reason, the employer did not have a representative provide a verbal statement at the fact-finding interview. The employer had provided written materials for consideration in connection with the fact-finding interview. Those included the notice of claim/protest on which Ms. Comes had indicated a voluntary quit without good cause attributable to the employer on April 22, 2016. The materials submitted by the employer also included a notice of termination/resignation form that provided April 22, 2016 as the separation date. On that form, Ms. Biondi wrote that Ms. Chinberg contacted the restaurant on Ms. Brockman's anticipated last day and stated that she had a family emergency. Ms. Biondi wrote that she had learned from another employee that Ms. Chinberg had quit. The materials that the employer submitted for the fact-finding interview also included an additional written statement from Ms. Biondi. In that statement, Ms. Biondi wrote that Ms. Chinberg was a no-call / no-show on April 22, 2016 and that Ms. Biondi interpreted that absence as a voluntary quit. Ms. Chinberg provided an oral statement at the fact-finding. Ms. Chinberg asserted that she had quit the employment due to being mistreated. Ms. Comes lacks personal knowledge concerning Ms. Chinberg's experience at the Perry Pizza Hut, but doubts that Ms. Brockman or Ms. Biondi would have behaved in the manner asserted by Ms. Chinberg at the fact-finding interview.

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

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

Iowa Admin. Code r. 871-24.25(22) 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 section 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 section 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:

(22) The claimant left because of a personality conflict with the supervisor.

Ms. Chinberg did not make herself available for the hearing and did not present any evidence to support the allegation that her voluntary quit was for good cause attributable to the employer. Ms. Chinberg did not present any evidence to support her allegation that the employment conditions were intolerable or detrimental to her. The employer's sole witness at the appeal hearing, Ms. Comes, lacked personal knowledge concerning Ms. Chinberg's employment or separation from the employment. The weight of the evidence in the record establishes a voluntary quit due to a personality conflict with the new supervisor, Ms. Biondi. The evidence establishes a voluntarily quit that was without good cause attributable to the employer.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Because Ms. Chinberg voluntarily quit the part-time employment without good cause attributable to the employer, effective April 22, 2016, she is disqualified for *benefits based on wages earned from this employment* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The employer's account shall not be charged for benefits paid to Ms. Chinberg.

Because the voluntary quit was from part-time employment and because the employer is not a base period employer for purposes of the claim year that began for Ms. Chinberg on May 1, 2016, the employment-specific disqualification has no impact on Ms. Chinberg's benefit eligibility during the current benefit year. Ms. Chinberg remains eligible for benefits based on her base period wages, provided she meets all other eligibility requirements. For the same reasons, the employment-specific disqualification does not give rise to an overpayment issue.

#### **DECISION:**

The May 17, 2016, reference 01, decision is modified as follows. Effective April 22, 2016, the claimant voluntarily quit the part-time employment without good cause attributable to the employer. Effective April 22, 2016, the claimant is disqualified for *benefits based on wages earned from this non-base period, part-time employment* until she has worked in and been paid

wages for insured work equal to ten times her weekly benefit amount. This employer's account shall not be charged for benefits. The claimant remains eligible for benefits based on her base period wages, provided she meets all other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs