

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDY I SISAMOUTH
Claimant

APPEAL NO: 09A-UI-19161-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WENDY'S
Employer

OC: 11/15/09
Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed a representative's December 12, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits and the employer's account was subject to charge because the employer discharged the claimant for nondisqualifying reasons. A telephone hearing was held on February 3, 2010. The claimant participated in the hearing. Linda Ramirez, the general manager, appeared on the employer's behalf. 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:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant had been working at another Wendy's location when he transferred to Ramirez's location in September 2009. Initially, the claimant worked full time. When the claimant asked that his hours be reduced because he had another job, the employer reduced his hours. Ramirez understood that as of late October the claimant could only work one day a week. She also understood he could only work Mondays. After the claimant worked on Wednesday, October 28, he was scheduled to work on November 2 and 9, both Mondays.

The claimant did not call or report to work on November 2 or 9. The claimant talked to Ramirez sometime between November 2 and 9. He told her he did not know he had been scheduled to work on November 2. The claimant did not call or report to work on November 9. If the claimant called on November 8, he talked to another manager to report he would not be at work the next day.

One of the Mondays, the claimant may have called the employer the night before because he took his child to the hospital at 10:00 p.m. and did not know when he would get back home. The manager on duty told the claimant to call the next morning to confirm he was unable to

work as scheduled. The claimant did not call as a manager asked him to do. If the claimant called on November 2 or 9, no one told Ramirez he called.

The claimant did not talk to Ramirez after November 9. When the claimant talked to a manager, he learned he was not on the schedule. Ramirez did not schedule the claimant to work after November 9. Instead of making a point of talking to Ramirez to explain why he had not been at work on November 9, the claimant assumed he had been discharged and did not attempt to personally contact Ramirez.

The claimant established a claim for benefits during the week of November 15, 2009. He has filed for and received benefits since November 15, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts establish the claimant initiated his employment separation when he failed to work as scheduled on November 2 and 9. Instead of trying to resolve any misunderstanding by personally talking to Ramirez, the claimant assumed he had been discharged and made no attempt to talk to her after November 9, 2009. The claimant's conduct amounts to an abandonment of his employment. For unemployment insurance purposes the claimant voluntarily quit this employment. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6-2.

Even though the claimant learned he was not on the schedule, he failed to take reasonable steps to find out why Ramirez did not schedule him. He failed to talk to Ramirez after he did not work as scheduled on November 9. Instead, he incorrectly assumed he had been discharged and did not attempt to resolve the situation so he would again be scheduled to work. The claimant abandoned his employment for reasons that do not qualify him to receive benefits.

Since the claimant has filed for and received benefits since November 15, 2009, the issue of overpayment or whether he is eligible for a waiver of any overpayment will be remanded to the Claims Section. Also, if the claimant earned more than \$1,120.00 from Embassy Suites after November 15, he needs to provide that information to his local Workforce office because he may have requalified to receive benefits.

DECISION:

The representative's December 12, 2009 decision (reference 01) is reversed. The employer did not discharge the claimant. Instead, the claimant voluntarily quit his employment by abandoning this job after November 9, 2009. The claimant is disqualified from receiving unemployment insurance benefits as of November 15, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is Remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css