

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA BARNES
Claimant

APPEAL NO. 14A-UI-08365-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

D OF C FOODS INC
Employer

OC: 07/06/14
Claimant: Respondent (5)

Iowa Code Section 96.5(2)(a) – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 6, 2014, reference 02, decision that allowed benefits to the claimant, provided she was otherwise eligible, and that held the employer's account could be charged for benefits. After due notice was issued, a hearing was held on September 3, 2014. Claimant Samantha Barnes did not participate. Marco Zuniga represented the employer. Exhibits One through Twelve were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the sole purpose of determining whether the employer participated in the fact-finding interview within the meaning of the law.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies her for benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Samantha Barnes was employed by D of C Foods, Inc., d/b/a McDonald's, as a part-time crew member from August 2013 and last performed work for the employer on June 22, 2014. Ms. Barnes transferred from the employer's Riverside Drive, Iowa City store to the employer's Coralville store in February 2014. Ms. Barnes' supervisor at the Coralville store was Allan Connolly, General Manager. After Ms. Barnes worked her shift on June 22, 2014 she was next scheduled to work on June 26, 2014. On that day Ms. Barnes contacted Mr. Connolly prior to the scheduled start of her shift to report an absence. When Ms. Barnes did not appear for the shift, Mr. Connolly discharged Ms. Barnes from the employment for attendance and documented the discharge. The employer's absence notification policy required that Ms. Barnes notify the employer at least two hours prior to the scheduled start of her shift if she needed to be absent. Ms. Barnes received a copy of the employee handbook that contained the attendance policy.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish either a voluntary quit or a discharge for misconduct in connection with the employment. The employer's sole witness lacked personal knowledge concerning the separation and events leading to the separation. The witness's testimony was at odds with the employer's exhibits. The employer's exhibits provided contradictory evidence. Exhibit Four documents a discharge for attendance. Exhibits One and Two, which appear to have drafted by someone without personal knowledge of the separation, indicate that the claimant voluntarily quit. The employer had the ability to present testimony from Mr. Connelly, the person with personal knowledge concerning the separation and the events leading to the separation, but the employer elected not to present such testimony. After reviewing the limited and contradictory evidence, the administrative law judge concludes that Ms. Barnes was discharged for no disqualifying reason.

DECISION:

The Claims Deputy's August 6, 2014, reference 02, decision is modified as follows. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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