

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENIFER R DAMERVILLE
Claimant

APPEAL NO. 20A-UI-08214-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NPC INTERNATIONAL INC
Employer

OC: 07/07/19
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jenifer Damerville filed a timely appeal from the July 9, 2020, reference 04, decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Damerville voluntarily quit on March 12, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on August 25, 2020. Ms. Damerville participated. Jill Parker represented the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jenifer Damerville was employed by NPC International, Inc., doing business as Pizza Hut, as a part-time delivery driver from November 2019 until Sunday, March 8, 2020, when she voluntarily quit. Ms. Damerville usually worked 20 to 30 hours per week. Jill Parker became General Manager of the Pizza Hut in Grimes about six weeks prior to the end of Ms. Damerville's employment.

On March 8, 2020, Ms. Damerville was scheduled to work a shift that started at 4:00 or 4:30 p.m. and that was to end at or about 7:30 p.m., depending on business needs. Ms. Damerville was required to complete assigned side-work after she completed her delivery duties and prior to leaving at the end of her shift. The restaurant became very busy during Ms. Damerville's shift. At 8:30 p.m., Ms. Damerville was still at the restaurant. Ms. Damerville had completed her side work of prepping dough for the next day and was anxious for Ms. Parker to check her side-work, to cash her out, and to approve her departure. Ms. Parker had asked to leave prior to completing the dough prep side-work and Ms. Parker had responded that she needed Ms. Damerville to complete the dough prep first. The dough prep took only 10 to 15 minutes. When Ms. Damerville finished with the dough prep, Ms. Parker was orienting a new employee. Ms. Damerville has a 10 year old daughter who was being cared for by a babysitter while Ms. Damerville was at work. The babysitter had contacted Ms. Damerville

during the shift to request that Ms. Damerville come get her child. At 8:30 p.m., Ms. Damerville stormed out of the restaurant after directing offensive comments at Ms. Parker. Ms. Damerville said, "My family is more f**king important than this f**king job. I hope your kids get fucking AIDS." Half an hour later, Ms. Damerville sent a text message stating that she would have another person bring up the money for the orders she had that evening, that the employer could keep the tips, and "Oh yeah, I quit, if it wasn't obvious." Ms. Damerville did not return to the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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).

Iowa Admin. Code r. 871-24.25(21) and (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:

- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(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).

At the appeal hearing, Ms. Damerville asserted that her quit was based on a COVID-19 school closure and her need to self-quarantine due to an immune-compromised status impacted by COVID-19. Ms. Damerville mentioned neither of these concerns at the time of her quit. Ms. Damerville had not consulted with a doctor regarding her purported immune-compromised status. The school closure likely came a week or so after Ms. Damerville quit, when state

authorities recommended that schools temporarily close. The weight of the evidence does not support Ms. Damerville's assertion of COVID-19 basis for the quit.

The evidence in the record establishes a voluntary quit that was without good cause attributable to the employer. Ms. Damerville voluntarily quit the employment due to dissatisfaction with the established conditions of the employment and dissatisfaction with her new boss. The side-work was an established component of the employment, as was the understanding that the actual shift end time was dependent on the level of business. The side-work component and the flexible end time are common in the restaurant industry and did not constitute intolerable and/or detrimental working conditions that would have prompted a reasonable person to leave the employment. Because evidence establishes a voluntary quit without good cause attributable to the employer, Ms. Damerville is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Damerville must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The July 9, 2020, reference 04, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective March 8, 2020. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), and if you have received benefits, you may have an overpayment of benefits that you will be required to repay.* Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



James E. Timberland
Administrative Law Judge

August 31, 2020
Decision Dated and Mailed

jet/sam