

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NIKIA R DESHER
Claimant

APPEAL NO. 11A-UI-03623-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NELLIS MANAGEMENT COMPANY
Employer

**OC: 02/13/11
Claimant: Respondent (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Nikia Desher filed a timely appeal from the March 15, 2011, reference 01, decision that denied benefits. After due notice was issued, an in-person hearing was held on May 11, 2011. Ms. Desher did not appear for the hearing and did not request a postponement of the hearing. Ken Waltman, vice president, represented the employer. Exhibit One was received into evidence.

ISSUE:

Whether Ms. Desher voluntarily quit the employment for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Nikia Desher was employed by Nellis Management Company, doing business as Long John Silver's/A & W, as a full-time crew chief until February 16, 2011, when she voluntarily quit the employment. Ms. Desher's immediate supervisor was Jeff Yates, general manager. Mr. Yates was on a leave of absence at the end of Ms. Desher's employment. Ken Waltman, vice president, acted as general manager in Mr. Yates' absence. The restaurant had temporarily borrowed an assistant manager from another restaurant. The restaurant employed another crew chief, Corena O'Berry. Though Ms. Desher had worked for the restaurant longer than Ms. O'Berry, the general manager regarded Ms. O'Berry as the lead crew chief.

Ms. Desher voluntarily quit on February 16, 2011, via an e-mail message she sent to Mr. Waltman half an hour before the store closed. Ms. Desher made her quit effective immediately. Ms. Desher left her restaurant keys at the restaurant before she departed. Ms. Desher indicated in her e-mail that she was quitting because she felt like she did not get credit for her hard work at the same time she believed Ms. O'Berry received undue credit. Ms. Desher indicated that she and another employee had a problem with Ms. O'Berry. The employer had made no changes in the conditions of Ms. Desher's employment and had not subjected Ms. Desher to discipline. The employer continued to have work available to Ms. Desher.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

When a worker voluntarily quits due to dissatisfaction with the work environment, a personality conflict with a coworker, or a personality conflict with a supervisor, the worker is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(6), (21) and (22).

The evidence in the record indicates that Ms. Desher voluntarily quit due to a personality conflict with a fellow crew chief and due to dissatisfaction with the work environment. The evidence fails to establish good cause attributable to the employer for the voluntary quit. Accordingly, Ms. Desher is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Desher.

DECISION:

The Agency representative's March 15, 2011, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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