

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILL ROBINSON**  
Claimant

**APPEAL NO. 12A-UI-12855-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**B-BOP'S INC**  
Employer

**OC: 09/30/12**  
**Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 24, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 28, 2012. Claimant Will Robinson was not available at the number he had provided for the hearing and did not participate. Robert Johnson, President, represented the employer and presented additional testimony through Chad Vandermark. Exhibits One and Two were received into evidence.

**ISSUE:**

Whether Mr. Robinson separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Will Robinson has performed work for B-Bop's during multiple separate periods of employment. Mr. Robinson most recently performed work for the employer on September 19, 2012. Mr. Robinson was a part-time crew member at the employer's Windsor Heights store. Mark Vandermark, General Manager, was Mr. Robinson's immediate supervisor. Mr. Robinson was a no-call, no-show on September 17, 2012. The next day, Mr. Robinson reported for work and said he had not called because he did not have minutes on his cell phone. Mr. Robinson was again a no-call, no-show on September 20. Later that day, Mr. Robinson sent a text message to Mr. Vandermark, asking Mr. Vandermark, "Do you want me to bring in shirts tomorrow?" Mr. Vandermark replied by text, "Sure." It was common knowledge at the restaurant that at the end of employment an employee had to return his work shirts to collect his last check. Mr. Robinson went to the workplace on September 21, returned his work shirts, and collected his paycheck. There was no additional conversation between Mr. Robinson and Mr. Vandermark at that time and no subsequent contact between Mr. Robinson and the employer. Mr. Vandermark at no time told Mr. Robinson that he was discharged from the employment.

Toward the end of the employment, Mr. Robinson was having legal issues that caused him to miss work. Mr. Robinson advised the employer that he needed to get a driver's license and

take care of some other matters to avoid going to jail. The employer had asked for advance notice of Mr. Robinson's need for time off, but Mr. Robinson declined to provide advance notice, citing the need to work. Mr. Robinson would just contact the employer the same day that he needed time off and indicated that he had other matters to attend to. Mr. Robinson was absent on August 8 and 14 and September 3 and 6 for such personal reasons.

B-Bop's was Mr. Robinson's sole base period employer for purposes of the claim for benefits that Mr. Robinson established effective September 30, 2012.

### **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 weight of the evidence indicates that Mr. Robinson initiated the separation from the employment by being a no-call, no show on September 20, by offering to bring his work shirts the next day, and by then ceasing to appear for additional work. The weight of the evidence does not support the conclusion that Mr. Robinson was discharged from the employment. Mr. Vandermark's text message response to Mr. Robinson's offer to bring his work shirts in was not sufficient to establish a discharge.

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.

The evidence in the record indicates a voluntarily quit for personal reasons and without good cause attributable to the employer. Accordingly, Mr. Robinson is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

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 his 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 B-Bop's was Mr. Robinson's sole base period employer, there are no other base period wage credits from other employers. Mr. Robinson is not eligible for benefits, including reduced benefits.

The administrative law judge notes that Mr. Robinson would have been disqualified for unemployment insurance benefits even if the administrative law judge had concluded that

Mr. Robinson was discharged from the employment. This is because the evidence indicated excessive unexcused absences, including two final no-call, no-show absences. The unexcused absences constituted misconduct in connection with the employment that would have disqualified Mr. Robinson for benefits. See Iowa Code section 96.5(2)(a) and Iowa Admin. Code section 871 IAC 24.32(7).

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

**DECISION:**

The Agency representative's October 24, 2012, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer effective September 20, 2012. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs