

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTIN K MUELLER
Claimant

APPEAL NO. 10A-UI-10024-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACK MARKET PIZZA LC
BLACK MARKET PIZZA
Employer

OC: 06/06/10
Claimant: Appellant (4-R)

Iowa Code Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Christen Mueller filed a timely appeal from the July 13, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 31, 2010. Ms. Mueller participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibit A was received into evidence.

ISSUE:

Whether Ms. Mueller's separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Christen Mueller was employed by Black Market Pizza as part-time server/cashier from May 2009 until May 9, 2010, when she voluntarily quit. Throughout the employment Ms. Mueller worked evenings on Fridays and ten-hour shifts on Saturdays and Sundays. Ms. Mueller had other part-time employment 7:00 a.m. to 1:30 p.m., Monday through Friday. Ms. Mueller quit the employment at Black Market Pizza because of the number of hours she worked between her two part-time employments and the time associated time away from her family.

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 an employee leaves the employment due to dislike to the regularly scheduled work hours, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(18).

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 her 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.

The weight of the evidence indicates that Ms. Mueller voluntarily quit the part-time employment at Black Market Pizza for personal reasons and not for good cause attributable to the employer. Black Market Pizza will not be charged for unemployment insurance benefits paid to Ms. Mueller. Ms. Mueller is disqualified for unemployment insurance benefits based wages she earned from the employment at Black Market Pizza until she has worked in and been paid wages equal to ten times her weekly unemployment insurance benefits amount, provided she is otherwise eligible. Ms. Mueller would continue to be otherwise eligible for reduced benefits based on base period employment other than the employment with Black Market Pizza, provided she is otherwise eligible.

This matter will be remanded to the Claims Division for determination of Ms. Mueller's eligibility for reduced benefits. The Claims Division will also need to consider whether there has been an overpayment of benefits based on any disbursed benefits that were based on the wage credits from the employment with Black Market Pizza.

DECISION:

The Agency representatives July 13, 2010, reference 01, decision is modified as follows. The claimant voluntarily quit the *part-time* employment at Black Market Pizza for personal reasons and not for good cause attributable to the employer. Black Market Pizza will not be charged for unemployment insurance benefits paid to the claimant. The claimant is disqualified for unemployment insurance benefits *based wages she earned from the employment at Black Market Pizza* until she has worked in and been paid wages equal to ten times her weekly unemployment insurance benefits amount, provided she is otherwise eligible. The claimant continues to be otherwise eligible for reduced benefits based on base period employment *other* employment, provided she is otherwise eligible.

This matter will be remanded to the Claims Division for determination of the claimant's eligibility for reduced benefits. The Claims Division will also need to consider whether there has been an overpayment of benefits in light of any disbursed benefits that were based on the wage credits from the employment with Black Market Pizza.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css