

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RENEE TUCKER
Claimant

APPEAL NO. 13A-UI-13915-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

OC: 11/17/13
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated December 12, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on January 14, 2014. The claimant participated personally. The employer participated by Tammy Rhoden, restaurant general manager. The record consists of the testimony of Renee Tucker and the testimony of Tammy Rhoden. Official notice is taken of agency records.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer;
Whether the claimant has been overpaid unemployment insurance benefits;
Whether the claimant will be required to repay unemployment insurance benefits; and
Whether the employer's account should be charged due to participation in fact finding.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a travel stop for trucks and automobiles located in Sioux City, Iowa. The claimant worked for the employer on two different occasions. The second time she was hired on August 16, 2013, as a team lead at the restaurant. She was a full-time employee. Her last day of work was November 10, 2013.

On November 11, 2013, the claimant told Ms. Rhoden, the general manager of the restaurant, that she would not be coming to work at her scheduled time of 6:00 p.m. because she did not have transportation and child care. Her husband was required to work late. Ms. Rhoden attempted to get in touch with the claimant later that evening by telephone and text to ask her to work the overnight shift since another employee had called in. The claimant did not respond.

The claimant did not come to work on November 12, 2013; November 13, 2013; November 14, 2013; and November 15, 2013. The employer tried to make contact with her by telephone and text and she did not respond. The employer has a policy, of which the claimant was aware, that the failure to come to work without notice for three consecutive work days is considered a voluntary quit.

The claimant established an original claim for unemployment insurance benefits with an original claim date of November 17, 2013. The claimant has received benefits through the week ending January 11, 2014. The employer participated in the fact-finding process.

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.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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 claimant is not eligible for unemployment insurance benefits. The findings of fact show how the credibility issues were decided in this case. The administrative law judge concludes that the claimant was not terminated by the employer on November 11, 2013. Rather the employer told the claimant that it was important that she resolve her transportation and child care difficulties so that she could come to work. Ms. Rhoden credibly testified that she tried to call the claimant on November 12, 2013; November 13, 2013; November 14, 2013; and November 15, 2013, to find out whether she was coming to work. If she had terminated the claimant, she would not have made these efforts. The claimant's failure to respond to any of these calls or text messages shows that she intended to sever the employment relationship. The claimant is considered a voluntary quit without good cause attributable to the employer. Benefits are therefore denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code Section 96.3-7-a. b/

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding process, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The decision of the representative dated December 12, 2013, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has been overpaid unemployment insurance benefits and those benefits will have to be repaid. The employer's account will not be charged for benefits paid.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs