

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK A SCHRECK**  
Claimant

**APPEAL NO. 15A-UI-04196-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRYSTAL INC**  
Employer

**OC: 03/08/15**  
**Claimant: Respondent (4/R)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 27, 2015, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on January 15, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on May 5, 2015. Claimant Mark Schreck participated. Diane Panzi represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit One into evidence.

**ISSUES:**

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer of liability for benefits.

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mark Schreck was employed as a part-time maintenance worker at a small nursing home facility from September 2014 until January 15, 2015 when he voluntarily quit in response to learning that the employer was not entirely satisfied with his work performance. A couple days before the quit, the nursing home administrator, Diane Panzi, mentioned to the claimant that she had received staff complaints regarding projects not being completed or not being completed on time. Ms. Panzi purposely did not go into detail or divulge the source of the complaint. Mr. Schreck was upset to learn that staff members had complained about his work performance. Mr. Schreck continued to be upset in the days that followed. One or more staff members had asked Mr. Schreck whether he was going to get fired. The employer had said nothing to Mr. Schreck about discharging him from the employment. On January 15, 2015, Mr. Schreck

notified Ms. Panzi that he was quitting and delivered his work keys to her. At the time of the separation, the employer continued to have work available for Mr. Schreck.

Mr. Schreck established a claim for benefits that was effective March 8, 2015 and received \$2,080.00 in benefits for the five-week period of March 8, 2015 through April 11, 2015. This employer is a base period employer, but the bulk of Mr. Schreck's base period wage credits come from other employers.

Ms. Panzi represented the employer at the March 26, 2015 fact-finding interview.

### **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.

Iowa Admin. Code r. 871-24.25(21), (28) and (33) provide:

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.

(28) The claimant left after being reprimanded.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

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.

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.

The weight of the evidence in the record indicates that Mr. Westcott voluntarily quit on January 15, 2015 without good cause attributable to the employer. The quit was in response to mild counseling that was short of a formal reprimand. The quit followed information from the employer that the work performance was not at the level the employer needed and that staff members had complained about his work performance. The employer did not initiate the separation and continued to have work for Mr. Schreck. Because the voluntary quit was without good cause attributable to the employer, Mr. Schreck is disqualified for benefits based on wages earned from this employment 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. Mr. Schreck remains eligible for reduced benefits based on wage credits from other base period employment, provided he meets all other eligibility requirements. This matter will be remanded to the Benefits Bureau for redetermination of Mr. Schreck's benefit eligibility.

Because the voluntary quit was without good cause attributable to the employer and because the employer participated in the fact-finding interview, the employer's account is relieved of liability for benefits paid to the claimant, including liability for benefits already paid. Redetermination of Mr. Schreck's eligibility may trigger an overpayment decision. See Iowa Code section 96.3(7).

**DECISION:**

The March 27, 2015, reference 01, decision is modified as follows. The claimant voluntarily quit the part-time employment on January 15, 2015 without good cause attributable to the employer. The claimant is disqualified for benefits *based on wages earned from this employment* 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 claimant remains eligible for reduced benefits based on wage credits from other base period employment, provided he meets all other eligibility requirements. The employer's account is relieved of liability for benefits paid to the claimant, including liability for benefits already paid.

This matter is remanded to the Benefits Bureau for redetermination of the claimant's eligibility for reduced benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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