

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CASSANDRA LOZANO WELCH
Claimant

KWIK TRIP INC
Employer

APPEAL 23A-UI-06512-DZ-T

**AMENDED
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/21/23
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Kwik Trip Inc, the employer/appellant,¹ filed an appeal from the Iowa Workforce Development (IWD) June 22, 2023 (reference 01) unemployment insurance (UI) decision. The decision allowed Ms. Lozano-Welchel REGULAR (state) UI benefits because IWD concluded the employer dismissed her from work on May 3, 2023 for a reason that did not disqualify her from receiving UI benefits. On June 29, 2023, the Iowa Department of Inspections, Appeals, and Licensing, UI Appeals Bureau mailed a notice of hearing to the employer and Ms. Lozano-Welchel for a telephone hearing scheduled for July 17, 2023.

The undersigned administrative law judge held a telephone hearing on July 17, 2023. The employer participated through Jesse Baker, assistant manager. Ms. Lozano-Welchel did not participate in the hearing. The undersigned took official notice of the administrative record.

The undersigned previously issued a decision in this matter, dated July 20, 2023. The record in this matter has not been reopened. This amended decision is issued, based on the already closed record, to clarify Ms. Lozano-Welchel's eligibility as of the effective date of her claim, May 21, 2023.

ISSUE:

Did the employer discharge Ms. Lozano-Welchel from employment for disqualifying job-related misconduct, or did she voluntarily quit without good cause attributable to the employer?

Did IWD overpay Ms. Lozano Welchel UI benefits?

If so, should she repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Lozano-Welchel began working for the employer in September 2022. She worked as a full-time guest service associate. Her employment ended on May 3, 2023.

¹ Appellant is the person or employer who filed the appeal.

On April 29, Ms. Lozano-Welchel gave the employer notice of her intention to resign on May 13 for personal reasons. On May 3, the employer ended Ms. Lozano-Welchel's employment based on business need. The employer did not pay Ms. Lozano-Welchel from May 4 -13. Ms. Lozano-Welchel filed her initial UI claim effective May 21, 2023. IWD has not paid Ms. Lozano-Welchel any REGULAR (state) UI benefits on her claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Ms. Lozano-Welchel's separation from employment was without good cause attributable to the employer.

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(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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer.² A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention.³ "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular.⁴

In this case, Ms. Lozano-Welchel quit as of May 13. Ms. Lozano-Welchel did what was best for her, but her quitting was not for a good-cause reason attributable to the employer according to Iowa law. Even though the employer terminated her employment before May 13, the last thing that happened before Ms. Lozano-Welchel filed her UI claim was her quitting. Ms. Lozano-Welchel is not eligible for UI benefits as of May 21, 2023, the effective date of her claim, because she quit without good cause attributable to the employer.

² Iowa Code § 96.6(2).

³ *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

⁴ *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

The undersigned further concludes IWD has not overpaid Ms. Lozano-Welchel any REGULAR (state) UI benefits on her claim because IWD did not send her any said benefits.

DECISION:

The June 22, 2023, (reference 01) UI decision is REVERSED. Ms. Lozano-Welchel voluntarily left her employment without good cause attributable to the employer effective May 13, 2023. Ms. Lozano-Welchel is not eligible for UI benefits until she has worked in and been paid wages for insured work equal to ten times her weekly UI benefit amount, as long as no other decision denies her UI benefits.

IWD has not overpaid Ms. Lozano-Welchel any UI benefits on her claim.



Daniel Zeno
Administrative Law Judge

July 25, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with this decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.