

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHAD E FENNELL**  
Claimant

**APPEAL NO. 12A-UI-09624-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**M J ABEL INC**  
**JONESY'S TACO HOUSE**  
Employer

**OC: 06/10/12**  
**Claimant: Respondent (2-R)**

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 August 1, 2012, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on August 31, 2012. Claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Stephen Petty represented the employer. Exhibits One and Two were received into evidence.

**ISSUE:**

Whether the claimant 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: Claimant was employed as a part-time kitchen manager until June 6, 2012, when he quit in response to a reprimand. On that day, the claimant confronted the new restaurant manager, his supervisor, in an aggressive and belligerent manner and asserted that the manager did not have authority to direct the work of employees. The restaurant manager did indeed have authority to direct the work of the employees under him. The claimant continued act in an aggressive, threatening manner towards the restaurant manager, who ultimately told the claimant he needed to leave work for the day. Claimant left and did not return. Later that same day, the claimant's uncle notified the employer that the claimant had gone to work for the uncle.

**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 evidence in the record establishes a voluntary quit in response to a reprimand. The evidence indicates that the claimant behaved inappropriately and in a threatening manner towards the restaurant manager and that the restaurant manager reasonably directed the claimant to leave for the day. The restaurant manager did not tell the claimant he was discharged from the employment. The claimant elected not to return and instead got a job with a relative. When a quit is in response to a reprimand, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(28).

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The evidence in the record establishes that the voluntary quit was not for the sole purpose of accepting new employment, but was instead in response to a reprimand. The claimant voluntarily quit the employment without good cause attributable to the employer. Accordingly, 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.

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 Workforce Development records indicate that this employer was the claimant's sole base period employer, the claimant is not eligible for reduced unemployment insurance benefits.

The administrative law judge notes that the claimant would also have been disqualified for unemployment insurance benefits if the administrative law judge had concluded that the claimant was discharged from the employment. This is because the claimant's belligerent comments and threatening behavior, directed at the supervisor, constituted misconduct in connection with the employment that would disqualify the claimant for unemployment insurance benefits. See Iowa Code section 96.5(2)(a) and Iowa Admin. Code section 871 IAC 24.32(1)(a).

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 whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The Agency representative's August 1, 2012, reference 02, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. 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 whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw