

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID P COULTER
Claimant

APPEAL NO. 11A-EUCU-00703-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK TRIP INC
Employer

**OC: 11/07/10
Claimant: Respondent (4)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.28 – Part-Time Employment

STATEMENT OF THE CASE:

Kwik Trip, Inc. filed a timely appeal from an unemployment insurance decision dated September 2, 2011, reference 06, that allowed benefits to David P. Coulter. After due notice was issued, a telephone hearing was held October 5, 2011, with Mr. Coulter participating. Employment Specialist Brooke Trochinski and Store Leader Sharon Schlake participated for the employer. Employer Exhibits One and Two were admitted into evidence.

ISSUES:

Was the separation a quit or a discharge?

Was the separation an event that disqualifies the claimant from receiving unemployment insurance benefits at this time?

FINDINGS OF FACT:

David P. Coulter worked part-time on the overnight shift for Kwik Trip, Inc. from June 27, 2011, through August 5, 2011. Although Mr. Coulter applied for an overnight position, he soon found that he could not work those hours because of his other job as a rural mail carrier. Mr. Coulter told Store Leader Sharon Schlake that he could no longer work the overnight hours. They discussed the possibility of him working hours earlier in the evening, but Ms. Schlake did not have hours available for him. Ms. Schlake took Mr. Coulter off the schedule because of his statement that he could no longer work his assigned shift. Mr. Coulter filed a claim for unemployment insurance benefits during the week of November 7, 2010. His unemployment insurance benefits are based on wages paid to him between July 1, 2009, and June 30, 2010. He did not receive wages from Kwik Trip, Inc. during these quarters.

REASONING AND CONCLUSIONS OF LAW:

The first step in analyzing this evidence is to characterize the separation. There is no evidence that Mr. Coulter uttered the words, "I resign." The greater weight of evidence, however, indicates that he told his direct supervisor that he could no longer work his assigned shift. The

administrative law judge views this statement as the equivalent of a formal resignation. One who resigns because he or she dislikes an assigned shift does so without good cause attributable to the employer. See 871 IAC 24.25.

One who resigns without good cause attributable to the employer is ordinarily disqualified for benefits until the individual has earned ten times his or her weekly benefit amount in wages for insured work for subsequent employers. See Iowa Code section 96.5-1. There is a different result for individuals who resign from part-time employment without good cause attributable to the employer. See 871 IAC 24.28. In the present case, Mr. Coulter may continue to receive unemployment insurance benefits for his benefit year that began November 7, 2010. These benefits shall not be charged to the account of Kwik Trip, Inc. In addition, Mr. Coulter must earn ten times his weekly benefit amount in wages for insured work before he may use these wages from Kwik Trip to compute unemployment insurance benefits in subsequent benefit years.

DECISION:

The unemployment insurance decision dated September 2, 2011, reference 06, is modified. The claimant left part-time employment without good cause attributable to the employer but is monetarily eligible for benefits based on his base period wages. He may continue to receive unemployment insurance benefits based on those other wages. Before he may use wages from Kwik Trip, Inc. to compute unemployment insurance benefits in future benefit years, he first must earn ten times his weekly benefit amount in wages for insured work after August 5, 2011. No benefits shall be charged to the account of Kwik Trip, Inc. as a result of this separation.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw