

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SEBRINA R SUDBROCK
Claimant

EYM KING OF IOWA LLC
Employer

APPEAL 15A-UI-05259-EC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/15
Claimant: Appellant (1)

Iowa Code §96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.25(37) – Resignation Accepted

STATEMENT OF THE CASE:

The claimant/appellant, Sebrina Sudbrock, filed an appeal from the April 28, 2015, (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting her employment. The parties were properly notified about the hearing. A telephone hearing was held on June 9, 2015. The claimant participated. The employer, EYM King of Iowa, LLC, participated through Kevin Clark.

ISSUE:

Was the separation from employment a voluntary quit with or without good cause attributable to the employer?

FINDINGS OF FACT:

The pertinent evidence is undisputed. Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Sebrina Sudbrock, was employed full-time at a Burger King restaurant in West Des Moines, Iowa, as a team member/cashier, from February 27, 2014, until February 15, 2015.

The claimant submitted a written resignation and two-week notice letter to her store manager on January 23, 2015. The store manager accepted her resignation. The claimant continued to work for three more weeks. Her last day of work was February 15, 2015.

During the three weeks between her resignation and her last day of work, the claimant and her store manager agreed that the claimant would take two weeks off, and would then come back to work on March 3, 2015. During this time off, the claimant learned that she would need knee surgery. On February 27, 2015, the claimant told her store manager that she could not return to work, because of her upcoming knee surgery. Her store manager accepted her resignation for the second time. The claimant did not return to work for this employer after February 15, 2015. Continuing work was available to her if she returned as initially intended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 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(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

The claimant bears the burden to prove that her action of voluntary leaving or resigning her employment was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

This claimant demonstrated her clear intention to resign from her employment, twice. Her employer accepted her resignation, twice. She did not return to work after February 15, 2015.

Although the claimant's decision to leave this employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The April 28, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Emily Gould Chafa
Administrative Law Judge

Decision Dated and Mailed

ec/mak