

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GILBERT L MONTENEGRO
Claimant

APPEAL NO: 12A-UI-09599-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LONE STAR STEAKHOUSE & SALOON
Employer

OC: 07/08/12
Claimant: Respondent (2/R)

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's July 31, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Zach Campion, the service manager, and Jeff Firth, the kitchen manager, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2011 as a part-time server. He worked 25 to 30 hours a week. During his employment, the claimant had issues getting to work on time and failing to notify the employer when he was unable to work.

The claimant's attendance became such an issue that within the last two weeks of his employment, the employer warned him that if he had another attendance he could be discharged. The claimant was scheduled to work on Father's Day, June 17, 2012. When the claimant did not call or report to work, the employer no longer considered him an employee. The claimant did not call or report to work any time after June 17, 2012.

The claimant filed a claimant for benefits during the week of July 8, 2012. He has filed weekly claims since July 8, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for

reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. When the claimant was scheduled to work on June 17, but did not call or report to work that day or any subsequent day, he voluntarily quit his employment by abandoning it. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6(2).

The claimant may have had compelling reasons for quitting his employment by abandoning it, but the evidence does not establish that he quit for reasons that qualify him to receive benefits. As of July 8, 2012, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of overpayment of any benefits he may have received since July 8 will be remanded to the Claims Section to determine.

DECISION:

The representative's July 31, 2012 determination (reference 01) is reversed. The claimant voluntarily quit his employment by abandoning it when he did not report to work on June 17 or contact the employer that day or any subsequent day. The evidence does not establish that he quit for reasons that qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of July 8, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits will be **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs