

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEVERLY A BEAUMONT
Claimant

APPEAL NO. 10A-UI-15663-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK TRIP INC
Employer

**OC: 10/17/10
Claimant: Appellant (2)**

871 IAC 24.1(113) – Other Separations

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 10, 2010, reference 02, decision that denied benefits, based on an agency conclusion that the claimant had voluntarily quit without good cause attributable to the employer. After due notice was issued, a hearing was held on January 4, 2011. Claimant participated. Lynn Nieman represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 10A-UI-15662-JTT, which concerned the same parties and identical issues, and with the hearing in Appeal Number 10A-UI-15664-JTT, which concerned the issues of whether the claimant has been able to work and available for work. Exhibits One and A were received into evidence.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Kwik Trip as a part-time kitchen worker and last performed work for the employer on February 16, 2010. At that time, the claimant commenced an approved leave of absence so that she could undergo surgery. There was no clear return to work date. The claimant had been absent on prior leaves of absence for other health reasons and both sides fully expected that the claimant would return to the employment. The claimant underwent knee replacement surgery on February 17, 2010. The claimant underwent physical therapy. The claimant experienced complications with the knee. The claimant had undergone another procedure on April 14 to loosen scar tissue in the knee.

At the beginning of April, the employer notified the claimant she would have to return to work by April 29 or separate from the employment. The claimant wanted and needed to return to the employment, with or without a doctor's release. The claimant's husband passed away suddenly on April 23. On the same day the claimant's husband passed away, the claimant contacted the employer to let the employer know that her husband had passed away. The claimant was distraught. The claimant commented that she did not know if she could return to the

employment. The claimant had not intended to quit or to place the employer on notice of a quit. Despite the context of the utterance, the employer took the utterance as a notice of quit. The claimant had not yet been released by her doctor to return to work. The claimant was unaware that she had said anything to indicate a quit. The claimant assumed she was fired from the employment when she was unable to return on April 29. The claimant was in the workplace on May 3, 2010 to visit with a friend and coworker. The employer did not take the opportunity to clarify with the claimant whether she was voluntarily separating from employment. But, on that same day, the employer notified its corporate office that there had been a voluntary separation.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113), provides as follows:

All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. **Layoffs.** A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. **Quits.** A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. **Discharge.** A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. **Other separations.** Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 weight of the evidence fails to establish a voluntary quit. The evidence indicates instead a distraught utterance on April 23, 2010 that a reasonable employer would not have viewed as a bona fide notice of quit. The evidence indicates instead that the claimant separated from the employment because she could not meet the physical requirements of the employment. The claimant's separation from employment falls under the category known as "other separations." The separation from the employment would not disqualify the claimant for unemployment insurance benefits. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The Agency representative's November 10, 2010, reference 02, decision is reversed. The claimant neither quit nor was discharged from the employment. The claimant's separation falls into the category of "other separations" and was due to her inability to meet the physical requirements of the employment. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

The claimant's work ability and work availability have been addressed in Appeal Number 10A-UI-15664-JTT.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw