

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MINDY M MCGRUFF
Claimant

APPEAL NO. 09A-UI-02267-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURGER KING CORPORATION
Employer

**OC: 04/27/08 R: 02
Claimant: Respondent (4)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 3, 2009, reference 06, decision that allowed benefits. After due notice was issued, a hearing was held on March 5, 2009. Claimant Mindy McGriff did not respond to the hearing notice and did not participate. Brandon Goddard, General Manager, represented the employer. The administrative law judge took official notice of the Agency's administrative record (DBRO) of benefits disbursed to the claimant, which records indicate that no benefits have been disbursed to the claimant in connection with the claim year that began April 27, 2008 and that will end April 25, 2009.

ISSUES:

Whether the claimant voluntarily quit or was discharged from the employment. The administrative law judge concludes that the claimant voluntarily quit the part-time employment.

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mindy McGriff was employed by the Burger King in Ankeny as part-time crew member for approximately one month from September to October 2008. Though the employer witness was not able to provide a start date or end date, Workforce Development records (DBRO) indicate that October 24, 2008 was the claimant's last day in the employment. On Ms. McGriff's last day she contacted the employer to request a ride to work. The employer did not have a policy of providing employees with transportation to work. The employer notified Mr. McGriff that the employer did not provide transportation to employees. Ms. McGriff did not appear for her shift that day and did not appear for any subsequent shifts.

The employer is not a base period employer for purposes of the claim year that began April 27, 2008 and that will end April 25, 2009.

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 weight of the evidence indicates that the employer had work for Ms. McGriff, but that Ms. McGriff ceased appearing for work on and after October 24, 2008. The weight of the evidence indicates that Ms. McGriff voluntarily quit the part-time employment and was not discharged by the employer.

Iowa Code section 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.

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.

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 her 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.

The evidence indicates that Ms. McGriff's voluntary quit was without good cause attributable to the employer. Accordingly, the employer's account will not be charged for benefits. The voluntary quit of the part-time employment does not disqualify Ms. McGriff for benefits generally. Ms. McGriff would be eligible for benefits, provided she meets all other eligibility requirements. However, Ms. McGriff is disqualified from receiving benefits based on wage credits she earned from this employer until she has earned 10 times her weekly benefit amount since the October 24, 2008 separation from the employer.

Because the claimant has received not benefits in connection with the additional claim established December 14, 2008, there is not overpayment issue to address.

DECISION:

The Agency representative's February 3, 2009, reference 06, decision is modified as follows. The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The employer's account will not be charged. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The claimant is disqualified from receiving benefits based on wage credits she earned from this employer until she has earned 10 times her weekly benefit amount since the October 24, 2008 separation from the employer.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs