

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORA L CASELTON

Claimant

APPEAL NO. 11A-UI-14227-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARDEES RESTAURANTS

MRG MANAGEMENT INC

Employer

OC: 10/09/11

Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Lora Caselton filed a timely appeal from the October 27, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 28, 2011. Ms. Caselton participated. David Glodowski, President and Owner, represented the employer.

ISSUE:

Whether Ms. Caselton 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: Lora Caselton was employed by MRG Management, Inc., doing business as Hardees Restaurants as the full-time general manager at the employer's Forest City restaurant. Ms. Caselton had begun her employment in 2005 as a crew member and served as general manager for just short of four years. On October 4, 2011, District Manager Newton Grotzinger and President David Glodowski went to Ms. Caselton's store to confront her about changes Ms. Caselton had made to employee timecards and to suspend her from the employment while the employer conducted further investigation into the matter. Ms. Caselton's alteration of employee timecards had come to the employer's attention while the employer was investigating other labor matters in its Iowa stores. When the employer went to speak with Ms. Caselton on October 4, the employer took several pages documenting Ms. Caselton's alterations to employee clock in and clock out times. The records indicate that since the end of July, Ms. Caselton had been altering almost all employees' timekeeping records on a daily basis and that the alterations included changing end of shift clock out times so that it would make it appear as if the employees left earlier than they did. The documentation suggested Ms. Caselton had been altering employee work records to reduce labor costs. Ms. Caselton had exceeded desired labor costs during each of the months in question.

During the meeting on October 4, Mr. Grotzinger and Mr. Glodowski notified Ms. Caselton that she would need to be suspended for 24 to 48 hours while the employer completed its

investigation into the matter. The employer advised Ms. Caselton that if the investigation revealed that she had been altering employee timekeeping records in violation of the employer's policy and labor laws, Ms. Caselton would then face "a change" in her employment—meaning discharge from the employment. The employer told Ms. Caselton that if she believed the investigation would establish unauthorized and/or illegal alteration of employee timekeeping records then she had the option of resigning from the employment. Ms. Caselton elected to resign at that point, prior to completion of the employer's investigation, and completed a resignation memo that she delivered to the employer.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits.

The evidence in the record does not establish a quit in lieu of discharge. At the time Ms. Caselton resigned from the employment, the employer did not present her with a choice between resigning or being discharged. The evidence indicates instead that Ms. Caselton voluntarily quit *in anticipation* that she would soon be found to have engaged in misconduct that would then subject her to discharge from the employment. The evidence indicates a voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Caselton is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Caselton.

The administrative law judge notes that even if the evidence had indicated a quit in lieu of discharge, there was sufficient evidence in the record to establish misconduct that would have disqualified Ms. Caselton for unemployment insurance benefits. This, as much as anything

else, explains Ms. Caselton's decision to voluntarily terminate her employment before the employer had completed its investigation.

DECISION:

The Agency representative's October 27, 2011, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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