

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**WENDELL F HACK**  
Claimant

**PIZZA HUT OF WEBSTER CITY LLC**  
Employer

**APPEAL 15A-UI-07955-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/14/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 6, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 31, 2015. Claimant participated. Employer participated through general manager, Kayla Kepler.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a delivery driver from September 23, 2008, and was separated from employment on May 26, 2015, when he quit.

Claimant was injured on the job while making a delivery for the employer on November 26, 2014. Claimant was unable to work after the injury until March 17, 2015 when he received a doctor's note allowing him to work, but with restrictions. Claimant did not return to the employer at this time. On May 26, 2015, claimant was released by his doctor without restrictions.

On May 26, 2015, claimant spoke with Ms. Kepler regarding his employment. Claimant's main job had been a delivery driver, with other duties (washing dishes and folding boxes) as needed, when he was injured. Ms. Kepler informed claimant his job, delivery driver, was still available and had been held open for him. Claimant wanted to just work in the kitchen. Ms. Kepler informed him that there were not any positions in the kitchen open. Claimant refused to return to the employer to work as a delivery driver, his old position. Claimant had been released to work with no work restrictions.

**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. Benefits are denied.

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(27) 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 § 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 § 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:

(27) The claimant left rather than perform the assigned work as instructed.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience.

Claimant's failure to return to work renders the separation job abandonment without good cause attributable to the employer. Claimant was employed as a delivery driver. Claimant was injured on the job in November 2014. Claimant was then unable to work without restrictions until May 26, 2015. The employer had held claimant's job, deliver driver, open for him until he was released to work with no restrictions. On May 26, 2015, claimant's doctor released him back to work with no restrictions. Ms. Kepler then spoke with claimant about his return to work. Claimant wanted to work in the kitchen; however, the employer did not have any kitchen positions open. Claimant was offered the opportunity to return to his job as a delivery driver, but he refused to return to work as a delivery driver.

The claimant's decision to quit because he did not want to return to his job after he was released by his doctor (with no restrictions) was not for a good-cause reason attributable to the employer. While claimant's leaving the 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 July 6, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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