

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**GREGG R SOLOMON
1401 23RD ST
SIOUX CITY IA 51104**

**COURT STREET TAVERN INC
2106 COURT ST
SIOUX CITY IA 51104-3244**

**Appeal Number: 05A-UI-03133-JTT
OC: 05/04/04 R: 01
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Voluntary Quit

STATEMENT OF THE CASE:

Court Street Tavern filed a timely appeal from the March 16, 2005, reference 08, decision that allowed benefits. After due notice was issued, a hearing was held on April 12, 2005. Claimant did not participate. Mr. Solomon did not respond to the notice by providing a telephone number at which he could be reached for the hearing. However, Mr. Solomon did mail a letter, post-marked April 7, 2005, in lieu of his appearance in the hearing. The letter was received into evidence as Exhibit A. Gregory England, owner, represented the employer and presented additional testimony through witnesses, Jayme Bracht, Kevin Roost, and Randy Nelson. Employer's Exhibits One and Two were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Gregg Solomon was employed by Court Street Tavern as a part-time night cleaning person until February 19, 2005, when he voluntarily quit. Immediately prior to his quit, Mr. Solomon was questioned by law enforcement regarding alleged thefts of cash from a jukebox located at the tavern. The jukebox is owned by a vendor, not by Court Street Tavern. The vendor suspected money was being taken from the machine(s) and secretly set up a surveillance camera to identify the person responsible.

Immediately after Mr. Solomon was questioned by law enforcement, he contacted the employer and left a message for owner Gregory England. In his message, Mr. Solomon indicated he was offended that he was being accused of theft, implicated a co-worker, and indicated he was quitting the employment. On or about the same day, Mr. Solomon put a letter on the same co-worker's car, advising that he had quit the employment and warning the co-worker that he would probably be accused next.

Prior to Mr. Solomon's quit, the employer had not conveyed to Mr. Solomon directly or indirectly an intention to discharge Mr. Solomon. In fact, Mr. Solomon had just cleaned the tavern that morning. At the time of Mr. Solomon's quit, the employer had not seen the surveillance video that apparently prompted law enforcement to question Mr. Solomon.

On or about March 3, 2005, Mr. Solomon had his girlfriend deliver to the employer a copy of e-mail correspondence between Mr. Solomon and Iowa Workforce Development regarding payment owed to him by the employer. In the e-mail, Mr. Solomon indicated that he left the employment as a result of being accused of the theft.

Mr. Solomon established an additional claim for benefits that was effective February 20, 2005. According to Workforce Development records, Mr. Solomon's weekly benefit amount is set at \$212.00. According to Workforce Development records, Mr. Solomon has not received any benefits as a result of the claim.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Solomon's voluntary quit of the employment was for good cause attributable to the employer. It does not.

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.

Since Mr. Solomon quit the employer, he has the burden of proving that the quit was for good cause attributable to the employer. Iowa Code section 96.6(2). When a claimant gives the employer notice of an intention to resign and the employer accepts the resignation, the claimant's voluntary quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(37).

The essential facts regarding the circumstances under which Mr. Solomon quit are undisputed by the parties. Mr. Solomon notified the employer he was quitting after he was questioned by law enforcement regarding alleged thefts. The employer had not communicated directly or indirectly an intention to terminate Mr. Solomon. The evidence in the record establishes that Mr. Solomon's voluntary quit was *not* for good cause attributable to the employer.

An individual who quits *part-time* employment without good cause attributable to the employer may receive reduced unemployment insurance benefits if he or she has sufficient wage credits from other base period employers to be monetarily eligible. Wages from the part-time employer the claimant left voluntarily will not be used for computing future benefits until the individual has earned subsequent wages for insured work equaling ten times his or her weekly benefit amount. See Welch v. IDJS, 421 N.W.2d 150 (Iowa app. 1998) and 871 IAC 24.27. Thus, Mr. Solomon may be eligible for reduced benefits, provided he has sufficient wage credits from employers other than Court Street Tavern. Once Mr. Solomon has earned ten times his weekly benefit amount subsequent to his separation from Court Street Tavern, wage credits he accrued as a result of that employment may be considered in determining any future benefit amounts. In any event, Court Street Tavern shall not be assessed for benefits to Mr. Solomon. If Mr. Solomon wishes to further pursue whether he is eligible for reduced benefits, he should contact his local Workforce Development Center. Once Mr. Solomon has earned ten times his weekly benefit amount, he should provide his local Workforce Development Center with proof of that income.

Since Mr. Solomon has not received any benefits to date, the administrative law judge need not address the issue of overpayment. See Iowa Code Section 96.3(7).

DECISION:

The Agency representative's March 16, 2005, reference 08, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. The claimant may be eligible to receive reduced unemployment insurance benefits, provided he has sufficient wage credits from other employers to be monetarily eligible and provided he is otherwise eligible. The employer's account shall not be assessed for benefits paid to the claimant. Wage credits accrued during the employment shall not be considered in determining benefits for the claimant until the claimant has worked in an been paid for insured work equal to ten times his weekly benefit amount.

jt/s