

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL A REINIG
Claimant

APPEAL NO: 10A-UI-01284-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURGER KING
Employer

OC: 12/20/09
Claimant: Respondent (2/R)

Section 96.5.1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed a representative's January 13, 2010 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on March 5, 2010. The claimant participated in the hearing. Jill Poole, attorney at law, represented the employer. Doug Louis, the store manager; Lorna Blair, a crew manager; Debra Johnson, a cashier; Thomas Johnson, a customer service representative; and Jim Snell appeared on the employer's behalf. During the hearing, Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 21, 2008. She worked as a full-time crew member. The claimant understood the employer's policy informed employees the employer considers an employee to have quit if the employee leaves work early without authorization. (Employer Exhibit Three.)

On December 18, the claimant reported to work as scheduled at 5:00 a.m. Around noon, the claimant was working on a cash register and Blair was getting food ready. During her shift, the claimant left her job station at various times to wash her hands after she coughed. The claimant had recently returned to the cash register after washing her hands. Blair saw the claimant cough while waiting on customers and told her to wash her hands. The claimant did not believe she needed to wash her hands when she coughed into her shoulder or arm. The claimant was upset because she did not like Blair telling her what to do and/or yelling at her. Although Blair did not know if the claimant would wash her hands as Blair told her to do, the claimant ultimately left the cash register and washed her hands. When the claimant came back from washing her

hands, Blair made a comment that the claimant was required to do what Blair told her to do. The claimant was still upset when she returned from washing her hands and said that she did not need this and was leaving. Blair responded by informing the claimant that if she left work early, the employer would consider her to have voluntarily quit her employment and she would no longer have a job. The claimant punched out and left about an hour early. Two employees heard the exchange between the claimant and Blair.

Blair reported the incident to Louis. Louis took the claimant off the schedule. The claimant went to work on Monday, December 21, at her regular time. She then learned she had been taken off the schedule. The employer told the claimant she no longer had a job because she had walked off the job on Friday. (Employer Exhibit One.)

The claimant tried to call Louis. She left messages for him to return her call. When he did not call her back, the claimant did not go to the store to talk to him. Based on Blair's report, Louis considered the claimant to have voluntarily quit her employment on December 18, 2009. (Employer Exhibit One.)

The claimant established a claim for benefits during the week of December 20, 2009. She has filed for and received benefits since December 20, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The facts establish on December 18, that before the claimant left work early, she heard Blair tell her that if she left work early she would not have a job. Even though the claimant asserted Blair gave her permission to leave early, the claimant's testimony is not credible. A preponderance of the evidence establishes that two co-workers, Debra Johnson and Thomas Johnson, heard the December 18 conversation and supported Blair's version of that conversation. The claimant was upset and may have incorrectly assumed that after she and Blair had an opportunity to calm down they could talk to Louis about the incident.

On December 18, the claimant left work early even after Blair warned her that if she did, she would not have a job. Based on the claimant's decision to leave early after she had been warned about the consequences, her actions and conduct on December 18 demonstrate that she quit her employment that day. The fact she went to work on December 21 does not take away from the fact she quit on December 18, 2009. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code section 96.6-2.

The law presumes a claimant quits without good cause when she leaves because of a personality conflict with a supervisor or leaves after receiving a reprimand. 871 IAC 24.25 (21) & (28).

The facts establish the claimant left work early on December 18, 2009 because she was upset with Blair and did not like Blair telling her what to do, wash her hands. The claimant established personal reasons for quitting, but the facts do not establish that she quit for reasons that qualify her to receive benefits. As of December 20, 2009, the claimant is not qualified to receive benefits.

Since the claimant has received benefits since December 20, 2009, the issue of overpayment or whether she is eligible for a waiver of any overpayment will be remanded to the Claims Section.

DECISION:

The representative's January 13, 2010 decision (reference 01) is reversed. The employer did not discharge the claimant. Instead, the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of December 20, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs