

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

GAIL AA MCDONALD
5194 S AVE
CHEROKEE IA 51012

5326 INC
D/B/A IHOP
6300 N 7TH ST
LINCOLN NE 68521

Appeal Number: 04A-UI-02797-DT
OC: 02/08/04 R: 01
Claimant: Appellant (1)

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 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Gail A. McDonald (claimant) appealed a representative's March 2, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from 5326, Inc. doing business as IHOP (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 5, 2004. The claimant participated in the hearing. Eric Shulz appeared on the employer's behalf. 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 for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on February 27, 2003. She worked fulltime as a server in the employer's Sioux City, Iowa restaurant. Her last day of work was January 29, 2004. She voluntarily quit effective that date about two and a half hours into her shift by hanging up her apron, saying that she "couldn't work here anymore," and leaving.

The claimant had various concerns over time regarding the functioning of the restaurant. Her most persistent concern was the fact that on a frequent basis the restaurant would be out of various items offered on the menu. She had expressed concern on this issue to the general manager, Mr. Shulz, in early November. The restaurant management would try to project how much of which items to order in advance, but frequently the restaurant would run out of certain items, causing the claimant to have to explain to customers that the restaurant was out of the item. On the claimant's last day, a customer had ordered a hot beef sandwich. The rest of the groups order was ready, but when the claimant went to pick up the meals, the kitchen informed her that they were now out of the beef necessary for the sandwich.

The employer's plumbing and dishwasher system was having occasional problems, and shortly before the claimant decided to leave, a customer to whom she had delivered a soft drink pointed out that there was still residue on the glass. It was not uncommon for the claimant to have difficulty in finding clean glassware or silverware to give her customers. The claimant was concerned that other employees did not do their assigned "side work," and she disliked being questioned by other servers who inquired on three occasions, "what're you on?" when the claimant was performing duties outside of her own responsibilities during slow times at the restaurant. In approximately September 2003 the claimant questioned a food worker who was thawing out meat and vegetables in the same area, against safe food handling procedures. She pointed this out to Mr. Shulz, who instructed the worker to separate the food items, but about three days later the worker resumed his practice of putting the foods together. The claimant did not again bring the matter to Mr. Shulz' attention. Another food worker did the same thing in approximately December, but the claimant did not address it at that time.

In the last few weeks prior to the claimant's separation, there were times the restaurant was slow and the shift leader instructed the staff, including the claimant, to clock out for additional breaks. The claimant questioned why she was not simply sent home if the restaurant was slow, but the shift leader indicated she wanted the claimant available expecting that business would pick up later. The claimant was losing a couple of hours per week due to having to clock out for additional breaks.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to 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.

871 IAC 24.25 provides that, 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 claimant did express her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code Section 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). While the claimant had some legitimate concerns, she has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's March 2, 2004 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of January 29, 2004, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

ld/kjf