

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEANNE L ETHINGTON
Claimant

APPEAL NO. 08A-UI-09838-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIZZA HUT
Employer

**OC: 09/14/08 R: 01
Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Pizza Hut (employer) appealed a representative's October 21, 2008 decision (reference 01) that concluded Jeanne L. Ethington (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant quit her employment for reasons that qualified her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 10, 2008. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Bill Van Schuyver, Lorraine Martinez, the new store manager, and Stacey Wagner, an area manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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 employer 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 June 21, 2007. The claimant worked as a full-time shift manager. The claimant wanted the employer to promote her to assistant manager. The claimant did not receive this promotion.

Wagner worked with the claimant the week of August 24, or before Martinez became the store manager on September 3. Wagner talked to the claimant about her unsatisfactory job performance and her failure to follow through on work she had been directed to get done. During this week, Wagner told the claimant her job was in jeopardy if the employer received any more customer complaints about the claimant's profanity at work.

When Martinez started working as the manager, she required the claimant and other employees to follow the employer's policy. Martinez concluded that before she became the manager, employees were not required to follow the employer's policy and procedures. As a result, the

claimant believed Martinez made changes in the way she wanted work completed. The claimant and Martinez had a personality conflict.

Between September 3 and September 9, after a crew meeting, Martinez asked the claimant to clean an area. Later Martinez overheard the claimant tell crew members she was not going to listen to Martinez's instructions. Martinez told the claimant that this was part of the closing procedure and she had to do this. After Martinez conducted a management meeting, she talked to the claimant and told her that her job was in jeopardy because she failed to follow Martinez' directions or work with Martinez to make the store's business better.

On September 16, the claimant came to work in what appeared to be a bad mood. She again complained when customers came in and she was still counting the cash register. After Martinez learned the claimant told the delivery driver to wait for a second pizza to be completed before making a delivery, Martinez told the claimant to tell the delivery driver to make the first delivery and come back to pick up the second order that was not yet done. The delivery driver waited for the second pizza, which made the first customer wait more than the customary time for the delivery. Martinez concluded the claimant ignored her instructions to have the delivery driver make the first delivery and then come back for the second delivery. When Martinez talked to the claimant about this, the claimant became upset and told Martinez she could not expect changes overnight. Martinez left the claimant alone so she would not become more upset.

Sometime later, the claimant asked Martinez about the prep lists. The claimant indicated that she had never done the prep lists like Martinez told her to do. Again the claimant became upset. The claimant told Martinez she could not deal with all her changes and was going to give the employer her two weeks' notice. Martinez then asked the claimant to talk about her issues outside. The two went outside, but the claimant remained very upset. Instead of trying to resolve their difference, the claimant told Martinez she would immediately give the employer her two weeks' notice. The claimant went back inside, wrote up her two-week notice, and told other employees she was quitting. When the claimant did not respond to Martinez, she asked the claimant to leave work early. Martinez knew the claimant was very frustrated and upset.

While waiting for her ride in the dining area, the claimant sent text messages to employees. The messages indicated she could not accept the changes Martinez made and that her changes were ridiculous.

On September 17, Martinez contacted the claimant and told her that her resignation was effective immediately. The employer decided to end the claimant's employment immediately because she was not working with Martinez, created a tense working environment the night before, and failed to follow Martinez' instructions. After the employer told the claimant her resignation was effective immediately, the claimant acknowledged she had an attitude with Martinez but not with her co-workers.

The claimant established a claim for benefits during the week of September 14, 2008. She has filed claims and received benefits as of the week of September 21, 2008.

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 §§ 96.5-1, 2-a. When a claimant gives advance notice of her resignation, which in turn prompts the employer to accept the

resignation effective immediately, no disqualification shall be imposed from the last day of work until the proposed date of the resignation. However, benefits will be denied effective the proposed date of resignation when the claimant quits without good cause. 871 IAC 24.25(38).

There are potentially two separations that must be addressed, the claimant's resignation and the employer's acceptance of the claimant's resignation immediately or the claimant's discharge prior the effective date of her resignation. When a claimant quits, she has the burden to establish she quits for reasons that qualify her to receive benefits. Iowa Code § 96.6-2.

The law presumes a claimant quits without good cause when she leaves employment because of a personality conflict with a supervisor. 871 IAC 24.25(22). The facts establish Martinez required employees to follow the employer's policy and procedures, when they previously were not required to do so. The changes Martinez implemented did not amount to a substantial change. Therefore, 871 IAC 42.26(1) does not apply to this case. The claimant admitted to Martinez she had an attitude with her. Based on the evidence presented during the hearing, the claimant quit her employment for reasons that do not qualify her to receive benefits. As of September 28, 2008, (the effective date of the claimant's resignation) the claimant is not qualified to receive benefits because she voluntarily quit her employment for reasons that do not qualify her to receive benefits.

The employer decided to accept the claimant's resignation immediately instead of allowing her to work until the week of September 28. For unemployment insurance purposes, the employer discharged the claimant two weeks prior to the effective date of her resignation. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for accepting the claimant's resignation effective immediately instead of allowing her to work another two weeks. The claimant and Martinez did not get along and the claimant had problems accepting the changes Martinez implemented (even though the changes only required employees to follow the employer's policy and procedures.) It is understandable why the employer ended the claimant's employment immediately. The facts do not, however, establish that the employer discharged the claimant for work-connected misconduct. Based on 871 IAC 24.25(38), the claimant is eligible to receive benefits for the week ending September 27, but she is disqualified from receiving benefits as of September 28, 2008.

Since the claimant has filed claims and received benefits since September 28, the issues of overpayment and waiver of the overpayment are remanded to the Claims Section to determine.

DECISION:

The representative's October 21, 2008 decision (reference 01) is reversed. The claimant voluntarily quit her employment without good cause as of September 28, 2008. The employer did not allow the claimant to work until the effective date of her resignation. Therefore, the claimant is eligible to receive benefits for the week ending September 27, 2008. The claimant is disqualified from receiving unemployment insurance benefits as of September 28, 2008. This

disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The issues of overpayment and wavier of overpayment are remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw