

**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**

**JACKIE M BAUDLER
1902 KIRKWOOD AVE
CHARLES CITY IA 50616**

**FLYING J INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-05874-DT
OC: 04/25/04 R: 02
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 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Flying J, Inc. (employer) appealed a representative's May 13, 2004 decision (reference 01) that concluded Jackie M. Baudler (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 13, 2004. The claimant participated in the hearing. Raul Ybanez of TALX UC Express appeared on the employer's behalf and presented testimony from one witness, Matt Door. 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 July 10, 2002. She worked full time as a server at the employer's Clive, Iowa restaurant, usually on a 2:45 p.m. to 11:00 p.m. shift. Her last day of work was April 15, 2004.

The claimant was scheduled off work April 16 through April 19. On April 17, she contacted the then-general manager and asked to also be off on April 20, because her boyfriend had returned from Iraq on April 16 and on the same day the boyfriend's ex-wife was arrested with guns. The boyfriend's lawyer had advised that it would be helpful if the boyfriend always had a witness available should the ex-wife attempt to enter the boyfriend's home. The claimant determined that she was the only person available who could stay with the boyfriend to serve as a potential witness should there be an incident. The then-general manager denied the claimant's request for an additional day off, as there were several vacancies in employment at that time and the employer was having difficulty ensuring that there was enough staff coverage. The claimant responded that maybe she would be back to work April 20 and maybe she would not.

The claimant was a no-call/no-show for work on April 20 and thereafter. Subsequent to her April 17 discussion with the then-general manager, she had concluded that she was going to quit her position because she felt she was due to be given the additional day she requested due to the service she had put in. She felt that the employer frequently deprived her of her earned breaks and that the employer had undeservedly given her warnings for an incorrect sale and unavoidable absences. She believed that by denying her request to be off on April 20, the employer had not given her the respect she was due. The employer acknowledged that the claimant had been given a warning for a weather-related absence, but noted that all other employees had worked their shifts that day. The employer acknowledged that there were times when breaks got pushed back due to business, but denied that there was any routine practice of depriving the claimant of breaks.

The claimant established a claim for unemployment insurance benefits effective April 25, 2004. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,662.00.

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. 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). Quitting because a vacation day is not granted is not good cause. 871 IAC 24.25(25) Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). While the claimant's work situation was perhaps not ideal, 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.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's May 13, 2004 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of April 20, 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. The claimant is overpaid benefits in the amount of \$1,662.00.

ld/kjf