

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACKIE CREACH

Claimant

APPEAL NO: 11A-UI-12801-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN BLUE RIBBON HOLDINGS LLC

VILLAGE INN & BAKERS SQUARE

Employer

OC: 08/14/11

Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Village Inn & Baker's Square (employer) appealed an unemployment insurance decision dated September 19, 2011, reference 02, which held that Jackie Creach (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 20, 2011. The claimant participated in the hearing. The employer participated through Conrad Thomas, General Manager and Tom Kuiper, Employer Representative. Employer's Exhibit One was admitted into 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:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time server on August 22, 2005 but was working part-time at the time she voluntarily quit on May 19, 2011. She submitted a written resignation on May 12, 2011 advising that her last day would be May 26, 2011 but she only worked through May 19, 2011. In her resignation notice, the claimant thanked the employer for six great years.

The claimant voluntarily quit due to problems with a server. About a month before she quit, she heard a rumor that the General Manager, Conrad Thomas, was having an affair with another server named Sarah. The claimant confronted Sarah at the beginning of May 2011 and Sarah did not like it but essentially admitted it. The claimant felt like Mr. Thomas was giving Sarah preferential treatment; he followed her around and helped Sarah with her job duties but did not help anyone else. She confronted Conrad but he denied it and acted like he did not know what she was talking about.

On approximately May 10, 2011, Sarah reported to work and started calling the claimant a "bitch." Sarah called the claimant a bitch probably 20 times and the claimant reported it to Vern, the manager on duty but he did not do anything about it. When Conrad reported to work, the claimant told him and he took them both to the office but then, "He proceeded to let her, pretty much bitch me out some more." She submitted her resignation shortly thereafter since the employer was not going to do anything about it even though she had received a write-up a year before for saying the "F" word.

The claimant filed a claim for unemployment insurance benefits effective August 14, 2011 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

Iowa Code § 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(21) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

The claimant voluntarily quit because a co-worker called her a bitch about 20 times on May 10, 2011 and the claimant did not feel the employer was doing anything about it. However, the claimant may not have been aware of disciplinary action the employer had taken with another employee.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Her voluntary separation was for personal reasons and benefits are therefore denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a

particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated September 19, 2011, reference 02, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css