

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEAN L CUNNINGHAM
Claimant

APPEAL NO. 11A-UI-08446-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEWIS & LEWIS INC
Employer

OC: 05/29/11
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Lewis & Lewis, filed an appeal from a decision dated June 23, 2011, reference 01. The decision allowed benefits to the claimant, Jean Cunningham. After due notice was issued, a hearing was held by telephone conference call on July 19, 2011. The claimant participated on her own behalf. The employer participated by Executive Chef Jacob Staber and Owner Mary Ann Rush.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Jean Cunningham was employed by Lewis and Lewis from January 17, 2007 until April 15, 2011 as a part-time employee. She did a number of jobs, such as pizza maker, bartender, counter person, and server. The snack bar area was being remodeled into a full-service restaurant in the spring of 2011. On April 15, 2011, Executive Chef Jacob Staber asked Ms. Cunningham if she wanted the position of dish washer. She said no, that she had 30 years of experience as a cook and did not want to wash dishes.

Mr. Staber was not aware of her past experience and immediately offered her a job as a cook, with a raise in pay. Ms. Cunningham misunderstood the offer and thought she was being put on a “reserve” list so that if one of the cooks already hired did not work out, she would be hired then. She told Mr. Staber she would have to think about it. Shortly thereafter she informed the shift manager, Josh Lewis, she was quitting because she “deserved better” than being a dishwasher.

If she had not accepted the job as either dishwasher or cook, she would have remained in her current position as bartender/server/counter person. She never questioned Mr. Staber more fully about the job offer, or Owner Mary Ann Rush, whose cell phone number she had and which she could have called at any time.

Jean Cunningham has received unemployment benefits since filing a claim with an effective date of May 29, 20011.

REASONING AND CONCLUSIONS OF LAW:

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.

There was no change in the claimant's contract of hire. Even if she had not been offered the job as a cook, and if she had refused the job of dishwasher, she could have continued in her current capacity with the same hours, wages, and job duties. Ms. Cunningham made certain assumptions, without inquiring more fully into the circumstances, and decided to quit. The record establishes she did not have good cause attributable to the employer for quitting and she is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of June 23, 2011, reference 01, is reversed. Jean Cunningham is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw