

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARA MANGIAMELI**  
Claimant

**APPEAL NO: 13A-UI-01750-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEXAS ROADHOUSE HOLDINGS LLC**  
Employer

**OC: 01-06-13**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 4, 2013, reference 01, decision that allowed benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on March 13, 2013. The claimant participated in the hearing. Jason McAlpine, Managing Partner; Matt Cornelison, Service Manager; and Tom Kuiper, Employer Representative; participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

**ISSUE:**

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time server, training coordinator and fill-in hourly manager for Texas Roadhouse from July 28, 2011 to January 13, 2013. She requested and was granted time off from December 1 through December 17, 2012, for her wedding. She worked several hours per week as an hourly manager prior to the hiring of Managing Partner Jason McAlpine November 1, 2012. Mr. McAlpine stated he wanted salaried managers to close and the claimant did not want to close so she lost hours in her hourly managerial position as the restaurant opened at 4:00 p.m. and servers were usually done by 7:30 or 8:00 p.m. Hourly managers earned \$12.50 per hour and the claimant earned \$4.35 per hour but could not predict her wages, including tips, as a server.

The claimant worked 7.00 hours November 1, 2012; 3.72 hours November 2, 2012; 6.48 hours November 3, 2012; 5.00 hours November 4, 2012; 5.67 hours November 5, 2012; 4.50 hours November 10, 2012; 5.52 hours November 11, 2012; 9.77 hours November 12, 2012; 2.75 hours November 14, 2012; 3.33 hours November 15, 2012; 2.08 hours November 25, 2012; 6.25 hours November 28, 2012; 4.93 hours December 23, 2012; 5.78 hours December 26, 2012; 5.35 hours December 27, 2012; 6.05 hours December 28, 2012; 6.42 hours December 30, 2012; 7.73 hours December 31, 2012; 4.33 hours January 2, 2013;

3.98 hours January 3, 2013; 4.67 hours January 5, 2013; 5.02 hours January 9, 2013; and 6.01 hours January 13, 2013.

The claimant was also experiencing problems paying for her son's preschool because she was not working the same number of managerial hours. On January 4, 2013, she met with Mr. McAlpine regarding her schedule and her role within the restaurant. The claimant did not feel there was any resolution regarding her managerial hours during her conversation with Mr. McAlpine and consequently submitted her two-week notice, effective January 24, 2013 (Employer's Exhibit One). Mr. McAlpine told the claimant there were shifts available for her last two weeks but the claimant declined to accept any available work.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2. The claimant was not hired as a manager or guaranteed a certain number of managerial hours. She made the decision not to work until closing any longer because she has a young child. There was no discernible change in the claimant's hours but she was generally not earning the same wages as she did prior to leaving for her three-week vacation because she was not receiving the same number of managerial hours in December 2012, due to the fact Mr. McAlpine wanted his managers to work until close and the claimant did not want to work until close. Mr. McAlpine's policy was not unreasonable nor directed at the claimant specifically. The claimant's wages changed because she did not want to close the restaurant any more. Because the change in the claimant's contract of hire was due to her decision not to close, and not due to the employer's actions, the administrative law judge must conclude the claimant's leaving was without good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits must be denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for

benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The February 4, 2013, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she 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 has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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