

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAIL E STANTON
Claimant

APPEAL NO. 09A-UI-14751-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BISTROS AND MORE INC
Employer

**Original Claim: 08/30/09
Claimant: Respondent (2-R)**

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 23, 2009, reference 01, that concluded the claimant was forced to quit after being given a choice of quitting or being discharged. A telephone hearing was held on October 29, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Josh Van Dyke participated in the hearing on behalf of the employer. Exhibits One and Two were admitted into evidence at the hearing.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked part-time for the employer as a server from October 28, 2008, to March 7, 2009. The general manager of the restaurant was Josh Van Dyke.

The claimant had a history of repeated tardiness for work and of times when she was absent from work without calling in. On her last day of work, the claimant was upset about how she was being scheduled and started to yell at her supervisor in the presence of coworkers and loud enough for customers to hear.

When Van Dyke heard about what had happened, he decided to suspended her for one week to see if her attitude would change. Van Dyke informed the claimant about her suspension on March 9 and 10. He informed the claimant that she was required to contact him at the end of the week to be put back on the schedule.

The claimant did not contact Van Dyke about returning to work. After waiting for three weeks, Van Dyke took the claimant's name completely off the scheduled due to her failing to contact him.

The claimant filed for and received a total of \$464.00 in unemployment insurance benefits for the weeks between

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The employer's testimony that he never heard from the claimant after her suspension is more credible than the claimant's testimony.

The claimant's failure to return to work after suspension amounts to a voluntary quit of employment. Since the employer had ample justification for suspension, her quitting was without good cause attributable to the employer.

The unemployment insurance law requires benefits to 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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated September 23, 2009, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw