

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

JODY A MAAS
17028 LENORE LN
DUBUQUE IA 52002-2357

CAFÉ MANNA JAVA LLC
269 MAIN ST
DUBUQUE IA 52001-6943

Appeal Number: 06A-UI-04664-H
OC: 04-09-06 R: 04
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 - Quit
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Café Manna filed an appeal from a decision dated April 28, 2006, reference 01. The decision allowed benefits to claimant Jody Maas. After due notice was issued, a hearing was held in Dubuque, Iowa, on June 27, 2006. The claimant participated on her own behalf. The employer participated by Owner Georgia Mihalakis.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jody Maas was employed by Café Manna from

October 31, 2005 until April 10, 2006. She was a part-time counter person. Her schedule varied depending upon the needs of the employer and her availability.

The claimant's attitude and work ethic was unsatisfactory to the employer. Manager Ginger Mihalakis had talked to her several times about her attitude but there was no improvement. The claimant was insubordinate, defiant and made disparaging comments to customers about the owners. In addition, the claimant's boyfriend had come into the café while she was working and made off with a good number of sugar packets with her full knowledge and consent. The employer attempted to talk to her about this but she refused to discuss it, first going to the restroom and then walking off the job.

The employer was in a difficult situation as Ms. Maas, and two of her siblings, as well as her mother, were all employees of the café. Ms. Mihalakis was concerned that all four of them would leave at once leaving the business in substantial hardship as far as staffing. Instead, hours began to be reduced as a disciplinary measure and in order to lessen the impact of any one of them, or all of them, leaving. Ms. Maas was advised of this by manager, Ginger Mihalakis, who explained that her hours were being reduced because of these problems.

The claimant had been offered evening hours but she declined because she was babysitting for a relative. When the number of her hours did not increase and because her attitude did not improve, she resigned on April 10, 2006.

Jody Maas has received unemployment benefits since filing a claim with an effective date of April 9, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

The claimant quit her job because she was dissatisfied with the reduction in her hours. The employer denies that she was ever hired on a full-time basis but does acknowledge she might have been scheduled for 40 hours a week when the café needed that much help. Her reduction in hours was a disciplinary measure due to her poor attitude and insubordinate conduct. The administrative law judge acknowledges having observed similar conduct by the claimant during the hearing. When a reduction in hours or a change in the contract of hire is the result of disciplinary action which might have led to discharge for misconduct, the change in the contract of hire does not constitute good cause attributable to the employer for quitting. Goodwin v. BPS Guard Services, Inc., 524 N.W.2d 28 (Minnesota App. 1994). The claimant's decision to quit was not with good cause attributable to the employer and she is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled and these must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of April 28, 2006, reference 01, is reversed. Jody Maas is disqualified and benefits are withheld until she has requalified by earning ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,746.00.

kkf/cs