

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETHANY ARNOLD
Claimant

APPEAL NO: 13A-UI-01850-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCSOIFERS INC
Employer

OC: 01/20/13
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 14, 2013, reference 01, decision that allowed benefits to the claimant. 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. Randy Betsinger, Area Supervisor and Brandy Sorenson, First Assistant, participated in the hearing on behalf of the employer.

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 general crew member for McDonald's from October 31, 2011 to January 18, 2013. On January 18, 2013, the employer was busy during the lunch period and it was loud in the restaurant. First Assistant Brandy Sorenson loudly tried to motivate employees to move quickly. The claimant felt Ms. Sorenson's comments were mostly directed at her and was upset and offended by Ms. Sorenson's actions. Around 1:30 p.m. the claimant asked Ms. Sorenson why she was being "so bitchy" while Ms. Sorenson was at the front counter surrounded by customers. Ms. Sorenson was "in shock" and yelled at the claimant to get out and go home. The claimant continued to argue and Ms. Sorenson again told her to leave and not come back until General Manager Nicole Macheck returned from vacation January 21, 2013. The claimant left and walked to her father's home. Her sister, Shandi Arnold, also worked for the employer and went to their father's house after her shift and called Area Supervisor Randy Betsinger to voice a complaint about Ms. Sorenson treatment on behalf of herself and the claimant. Mr. Betsinger stated the claimant would have to speak with him herself about her issues with Ms. Sorenson and could not go through her sister due to the confidential nature of personnel issues. He suggested they sit down with Ms. Sorenson to discuss the problem. The claimant was not satisfied with his response because her sister had

talked to Ms. Sorenson about a problem in the past and it was not resolved to her satisfaction. Consequently, the claimant decided to voluntarily quit her job effective January 18, 2013.

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 chose to quit after Ms. Sorenson spoke loudly to all employees on that shift, including the claimant, telling them to move more quickly. It was the lunch rush and the restaurant was busy. The claimant did not appreciate her tone and asked her why she was being so "bitchy." After Ms. Sorenson sent her home, the claimant had her sister call Mr. Betsinger about Ms. Sorenson's treatment of the claimant. Mr. Betsinger is not allowed to discuss one employee's complaints or disciplinary action with another employee as personnel issues are confidential and consequently he told the claimant's sister the claimant would have to contact him herself. It is not good practice to have a family member or friend call any employer on the claimant's behalf. The claimant decided to voluntarily quit her job rather than meet with Ms. Sorenson, Mr. Betsinger or Ms. Macheck when she returned from vacation. The claimant chose not to pursue the matter with the employer because Ms. Sorenson had yelled at her sister in the past "so what's to say she wouldn't do it to me" in the future. She also decided not to meet with Ms. Sorenson because her sister had talked to her in the past and the claimant did not feel Ms. Sorenson's behavior changed but acknowledges her relationship with Ms. Sorenson was good and they "usually got along fine." One possible isolated incident of arguably unprofessional behavior by Ms. Sorenson does not constitute intolerable or detrimental working conditions. The claimant has not demonstrated that her leaving was for good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits are 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 14, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css