

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDICE R RADLOFF
Claimant

APPEAL NO. 08A-UI-06353-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCSOIFER'S INC
Employer

OC: 06/15/08 R: 03
Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

McSoifer's, Inc. (employer) appealed a representative's July 9, 2008 decision (reference 01) that concluded Candice E. Radloff (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant voluntarily quit her employment for reasons that qualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 24, 2008. The claimant participated in the hearing. Amy Feehrer, the second assistant manager; Karla Warnke, the store manager; Randy Betsinger, the area supervisor; and Sam Soifer, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2007. The claimant worked as a full-time team leader. Warnke supervised the claimant, but Feehrer helped supervise the claimant and provided input regarding the claimant's performance evaluations.

The claimant's job was not in jeopardy before May 16, 2008. The employer considered the claimant a very good employee.

On May 16, when Feehrer returned home from Minneapolis, where she attended some training classes for work, her daughter told her she found Feehrer's husband and the claimant in bed at Feehrer's home. Feehrer talked to Warnke and told her she did not feel comfortable working with the claimant after learning the claimant was involved with Feehrer's husband. Warnke talked to Betsinger about the situation. The employer did not want to lose a good employee, the claimant, but recognized that as a result of her relationship with Feehrer's husband there would be problems at work.

On or about May 23, the Warnke and Betsinger talked to the claimant. They told the claimant that as a result of a personal issue between the claimant and a supervisor, the claimant could no longer work at the Waverly store. The employer offered to transfer the claimant to the Charles City or Hampton store. Warnke understood the claimant agreed to transfer to the Charles City store, but the claimant never followed up on this job. The claimant decided she would not accept continued employment at either the Charles City or Hampton locations because of the distance she would have to drive to work. Although the claimant was living in Clarksville, she planned to move to Shell Rock within a week. After the claimant declined the transfer, she did not move to Shell Rock.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Even though the employer would not allow the claimant to continue to work at the Waverly location, the employer offered her continued employment at the Charles City or Hampton location. For unemployment insurance purposes, the claimant quit her employment when she declined to work at either of these locations. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6-2.

The law presumes a claimant voluntarily quits employment with good cause if she leaves because of a substantial change in her employment. 871 IAC 24.26(1).

The administrative law judge takes judicial notice that when the claimant lived in Clarksville and worked in Waverly she drove approximately 13 miles to work. If the claimant had lived in Shell Rock, she would have driven only 5 or 6 miles to work at the Waverly location. When the employer offered the claimant a job in Charles City or Hampton, she was living in Clarksville. Clarksville is about 20 miles from Charles City and 31 miles from Hampton. If the claimant had moved to Shell Rock as she initially planned, she would have lived about 30 miles from Charles City and 34 miles from Hampton. Given the fact the claimant did not move to Shell Rock, but stayed in Clarksville she was only 20 miles from Charles City. This meant she would have had to drive an additional 14 miles (round trip) if she had transferred to Charles City. These additional miles do not amount to a substantial change in the claimant's employment.

While it is not an issue that made any difference to the decision, the claimant's assertion that she had no idea what personal issue another supervisor had with her is not credible. Even though the claimant did not engage in the relationship at work, a reasonable person would know that having a relationship with a supervisor's spouse would affect her employment once the relationship/affair had been exposed. Since the claimant did not engage in any inappropriate conduct at work, the employer did not discharge her and wanted her to remain as an employee.

Based on the facts in this case, the claimant quit her employment for reasons that do not qualify her to receive benefits. As of June 15, 2008, the claimant is not qualified to receive benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. However, as of July 1, 2008, the law was amended and provides that if the department determines 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 Iowa

Code § 96.6-2, 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.

As a result of the law that became effective as of July 1, the issue of overpayment and whether the claimant must repay any overpayment is remanded to the Claims Section to determine.

DECISION:

The representative's July 9, 2008 decision (reference 01) is reversed. The claimant voluntarily quit her employment for personal reasons that do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of June 15, 2008. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issues of overpayment and whether the claimant must repay any overpayment are remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css