

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLY HALLER**  
Claimant

**APPEAL NO. 08A-UI-00870-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RIVERSIDE RESTAURANT INC**  
Employer

**OC: 01-06-08 R: 04**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 23, 2008, 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 February 11, 2008. The claimant participated in the hearing. Bilal Abduli, Manager, 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 part-time waitress for Riverside Restaurant from October 1, 2007 to December 20, 2007. The manager was upset with the claimant because he felt she had a poor attitude and did not want to take orders so after they argued December 20, 2007, he told her he was tired of her attitude and if she did not like the way he ran the restaurant she could “get the fuck out.” The claimant took her break and then told the employer she was quitting.

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.

While the claimant contends her employment was terminated, the employer told her if she did not like how he was running the restaurant she could leave and she made the choice to leave. The employer testified he was considering discharging the claimant if her attitude did not improve but did not plan to terminate her employment at that time. Consequently, the administrative law judge concludes the claimant voluntarily quit her job. 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. Although the parties had a disagreement, under these circumstances the administrative law judge cannot conclude that the claimant's decision to leave was for good cause attributable to the employer as defined by Iowa law. Therefore, benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The January 23, 2008, 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 is overpaid benefits in the amount of \$660.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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