

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANNON R WEBER

Claimant

APPEAL NO: 08A-UI-05138-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CRACKER BARREL OLD
COUNTRY STORE INC**

Employer

**OC: 04/27/08 R: 12
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Cracker Barrel Old Country Store, Inc. (employer) appealed a representative's May 21, 2008 decision (reference 01) that concluded Shannon R. Weber (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 19, 2008. The claimant participated in the hearing. Scott Miller 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 13, 2005. She worked part time (approximately 22 hours per week) as a server at the employer's Council Bluffs, Iowa restaurant. Her last day of work was April 21, 2008.

The claimant was pregnant, but had suffered prior miscarriages and so her doctor was closely monitoring the pregnancy. The claimant had had an ultrasound on April 21 that had given the doctor cause for concern that there may have been another miscarriage. On April 22 the claimant called off work due to having a doctor's appointment for a follow-up ultrasound and blood test. She was to go in on the morning of April 23 for a further blood test. On April 23 the claimant was scheduled for a shift from 5:00 p.m. to 10:30 p.m. She was also scheduled for a mandatory safety training meeting at 10:00 a.m. that day.

Because of the issues regarding the pregnancy and need to go in for an additional blood test, the claimant forgot about the 10:00 training meeting, and did not attend. She later remembered

the meeting, and remembered being told that if the servers did not go to the training meeting they would be removed from the schedule. As a result, that afternoon the claimant called the employer and spoke to an assistant manager at approximately 2:30 p.m., explaining why she has missed the morning meeting and seeking to get coverage for the first part of her scheduled shift that night so that she could attend another training session that was scheduled for 5:30 p.m. The assistant manager confirmed that if the claimant did not make arrangements to take the training, she would be removed from the schedule, but he was not able to procure anyone to cover the claimant's shift. The claimant also was unable to find anyone to cover the shift, and so she did not report for either the training or her shift. The employer then removed the claimant from the schedule for the next day. On April 25 she received confirmation from her doctor that she had indeed suffered a miscarriage of her pregnancy.

On May 1 the claimant came in for her paycheck and spoke to another assistant manager. She told that assistant manager she believed she had been discharged. The assistant manager confirmed she had been taken off the schedule for failure to take the mandatory training class, but indicated that there had been no discharge decision, and he told the claimant the employer wanted her to come back to work. The employer put the claimant back on the schedule for the week of May 4. On May 4 the claimant got a message from the first assistant manager telling her that she was on the schedule to work that day and that she would be taken off the schedule again if she did not come in. The claimant felt the assistant manager was being unnecessarily rude, and felt the employer's actions in initially removing her from the schedule after missing the training meeting due to her doctor's appointment was unfair. As a result, the claimant determined that she did not believe she could return to her employment with the employer, and did not further respond to or contact the employer.

The claimant established a claim for unemployment insurance benefits effective April 27, 2008. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,218.00.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that her separation was not “voluntary” as she had not desired to end the employment; she argues that it was the employer's action of removing her from the schedule after she missed the training meeting which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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. The rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as leaving rather than returning to perform assigned work and leaving when work is available and the claimant has not been told that she had been discharged. 871 IAC 24.25.

While there may have been some ambiguity in the days immediately following April 23, on May 1 the employer clearly told the claimant that it wanted her to return to work. Further, on May 4 the claimant understood that she was on the schedule and that the employer had work available for her. It was her choice not to respond and return to perform that work; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). While the claimant's work situation was perhaps not ideal and the employer's handling of the claimant's personal situation was not the most sensitive, she has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied her burden. Benefits are denied.

Iowa Code § 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 representative's May 21, 2008 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of April 27, 2008,

benefits are withheld until such time as the claimant 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 \$1,218.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs