

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDY K HOFFMAN

Claimant

APPEAL NO. 10A-UI-07728-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRINNELL STEAKHOUSE

Employer

OC: 04/11/10

Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Grinnell Steakhouse filed an appeal from a representative's decision dated May 14, 2010, reference 01, which allowed benefits to Judy Hoffman from April 11 through May 1, 2010 on a finding that she was discharged prior to the effective date of her resignation.. After due notice was issued, a hearing was held by telephone at 2:00 p.m. on July 15, 2010. The employer participated by Laurie Hauser, Owner. Ms. Hoffman responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing. She did not contact the Appeals Bureau until 2:23 p.m., after the hearing record was closed. She missed the call for the hearing because she had her cell phone set to "vibrate." Because it was her responsibility to make sure she was ready to receive the call, the administrative law judge declined to reopen the hearing record.

ISSUE:

At issue in this matter is whether Ms. Hoffman was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Hoffman began working for Grinnell Steakhouse in October of 2008. She was employed full time as a cook. On April 9, 2010, she gave notice that she was quitting to move out of town. She was planning to be married and she had her fiancé were moving to Creston, Iowa. She indicated her last day would be approximately April 27. Continued full-time work would have been available if she had not given her notice to quit.

On April 12, the owner of the business met with Ms. Hoffman to finalize when her last day would be. Ms. Hoffman appeared stressed from the number of tasks she had to complete in order to prepare for her wedding and the move. The owner suggested that she could leave earlier than the end of the month if she so chose. It was agreed that she would work through April 15, which was the end of the pay period. The employer then made plans to cover the remainder of her shifts through the end of the month. There was a farewell celebration on Ms. Hoffman's last day and she gave no indication that she was unhappy about leaving before the end of the month. When she came to get her paycheck on April 16, she told the owner that she wanted to work

until the end of the month because she needed the money. Because the schedule had already been filled, she was not allowed to return.

Ms. Hoffman filed a claim for job insurance benefits effective April 11, 2010. She received a total of \$325.00 in benefits for the two weeks ending April 24, 2010

REASONING AND CONCLUSIONS OF LAW:

Ms. Hoffman initially notified her employer that she was leaving the employment the end of April of 2010. If an individual is discharged prior to the effective date of resignation, she is allowed benefits from the last day worked until the effective date of resignation. See 871 IAC 24.25(38). Although Ms. Hoffman left her employment earlier than the date she had originally given the employer, it was not because she was discharged. She was offered the opportunity to leave early and she accepted it. She was not told she had to leave earlier, only that she had the option of doing so. She left early in spite of the employer's willingness to allow her to complete the notice period. It is concluded, therefore, that she voluntarily quit on April 15, 2010.

Ms. Hoffman tendered her resignation because she had plans to relocate out of town. An individual who leaves employment to move to a different locality is presumed to have left employment without good cause attributable to the employer. 871 IAC 24.25(2). Inasmuch as Ms. Hoffman did not give the employer any other reason for leaving, it is concluded that her separation was not attributable to the employer. Accordingly, benefits are denied effective April 11, 2010.

Ms. Hoffman has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated May 14, 2010, reference 01, is hereby reversed. Ms. Hoffman voluntarily quit her employment with Grinnell Steakhouse for no good cause attributable to the employer. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Hoffman will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css