

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA RODRIGUEZ
Claimant

APPEAL NO. 09A-UI-08059-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HOSPITALITY & CATERING MANAGEMENT
SERVICES**
Employer

OC: 03/08/09
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Hospitality and Catering Management Services, filed an appeal from a decision dated May 28, 2009, reference 01. The decision allowed benefits to the claimant, Maria Rodriguez. After due notice was issued a hearing was held by telephone conference call on June 22, 2009. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Program Director Laura Smolenski.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Maria Rodriguez was employed by Hospitality and Catering Management from January 14, 2008 until May 16, 2008 as a full-time line worker. Her last day of work was May 15, 2008, and she was no-call/no-show to work after that date. Continuing work was available to her had she reported for work but the employer has not had any contact with or from the claimant since her last day of work.

Maria Rodriguez has received unemployment benefits since filing a claim with an effective date of March 8, 2009.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant quit her employment even though continuing work was available to her had she stayed. Ms. Rodriguez did not participate in the hearing to offer any testimony regarding why she quit and therefore has not met her burden of proof under Iowa Code chapter 96.5(1) to establish she had any good cause attributable to the employer for quitting. It must therefore be concluded she quit without good cause and is disqualified from receiving unemployment benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided 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 section 96.6, subsection 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.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of May 28, 2009, reference 01, is reversed. Maria Rodriguez is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs