

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA E VORE**  
Claimant

**APPEAL NO: 10A-UI-00241-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CUMMINGS ENTERPRISES**  
Employer

**OC: 11/29/09**

**Claimant: Respondent (2/R)**

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:**

Cummings Enterprises (employer) appealed a representative's December 28, 2009 decision (reference 01) that concluded Amanda E. Vore (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 February 15, 2010. The claimant participated in the hearing. Betty Goerke appeared on the employer's behalf and presented testimony from two other witnesses, John Fox and Donna McConnell. 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 November 4, 2009. She worked full time as a crew person in the employer's fast-food restaurant. Her last day of work was November 29, 2009.

The claimant was scheduled to work a shift from 6:00 a.m. to 2:00 p.m. She did arrive late, at 6:10 a.m. She went on break shortly after 8:00 a.m. At about 8:25 a.m., she left the restaurant, commenting to Mr. Fox, a crew chief who had just come on duty, that she was "outta here." About 15 minutes later, all of the crew including the shift supervisor began inquiring where the claimant was, that she had not come back from break. Mr. Fox then reported that the claimant had left.

On November 30 the claimant was again scheduled for a 6:00 a.m. to 2:00 p.m. shift, but was a no-call, no-show for the shift. Ms. Goerke, the store manager, called the claimant sometime

after 8:00 a.m. to inquire if the claimant was coming in; the claimant responded that she was not returning to work with the employer.

The claimant asserted that she had received a phone call while on break indicating that her son who suffers from a serious medical condition had again fallen ill and that she had told the shift supervisor that she needed to leave. However, this testimony is not credible in light of the employer's more persuasive testimony of Mr. Fox and Ms. McConnell that no one, including the shift manager, was aware that the claimant had left until Mr. Fox informed them the claimant had left. The claimant's testimony that it was an agreed-upon arrangement that if she received a call that her child was ill that she would need to leave and would be gone for several days in light of Mr. Goerke's testimony that there was no such arrangement when the claimant was hired, that while an absence for such reason would be excused, there would need to be regular notification each day of the absence. The claimant's testimony that she did not speak to Ms. Goerke on November 30, but rather did not speak to her until about December 3 at which time she was told only to bring in her uniform is not credible in light of Ms. Goerke's testimony to the contrary and Mr. Fox's testimony that when she came in on or about December 4 as a customer that he asked her what had happened and she responded that she had not been happy, that she had been expected to know everything. As a whole, the claimant's testimony that she had not quit but that she had been fired is not as credible as the employer's testimony that the claimant had not been fired, but that she had quit.

The claimant had previously been in management in another restaurant in the chain affiliated with the employer. When she was hired, she indicated she was interested in resuming a management position. Ms. Goerke explained that all employees coming from management outside the employer's stores start out as a regular crew person, and if there are no problems, the employee would become a crew chief and management trainee after 30 days. The claimant's 30 days had not yet expired by November 29. However, she was having frustrations over learning the differences in how her former store operated and how the employer's store operated. On the morning of November 29 the claimant was working on the line when there was a breakfast rush. One of the other persons on the grill had gone on break, and so the claimant had to cover more areas of the grill. The shift supervisor had to urge the claimant several times to "hurry up." The claimant testified that the shift supervisor had never come back to assist her in the grill area at all; however, Ms. McConnell, who had been working during that time that morning as a cashier, credibly testified that the shift supervisor in fact had gone back to assist the claimant several times.

The claimant established a claim for unemployment insurance benefits effective November 29, 2009. The claimant has received unemployment insurance benefits after the separation.

#### **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 asserted she had not desired to end the employment; she asserts that the employer discharged her and so that 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 administrative law judge has concluded that the employer's testimony that the claimant quit is more credible than the claimant's testimony that she was fired. The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

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), (22). While the claimant's work situation was perhaps not ideal, 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.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's December 28, 2009 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of November 29, 2009, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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