

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHALYNN G ZOLLARS
Claimant

APPEAL NO. 10A-UI-07939-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LYNN BELLUCI-ADAMS
BELLUCI PIZZA HOUSE
Employer

OC: 05/02/10
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Belluci Pizza House (Belluci), filed an appeal from a decision dated May 25, 2010, reference 01. The decision allowed benefits to the claimant, Shalynn Zollars. After due notice was issued a hearing was held by telephone conference call on July 19, 2010. The claimant participated on her own behalf and with Donna Zollars. The employer participated by Manager Chad Brensel.

ISSUE:

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

FINDINGS OF FACT:

Shalynn Zollars was employed by Belluci from May 2007 until May 8, 2010 as a part-time waitress. Her last day of work was April 27, 2010. The claimant and Manager Chad Brensel had a personal relationship and were co-habiting. On April 29, 2010, their relationship ended and she moved out of their shared residence. She was scheduled to work that night but was no-call/no-show to work and for each scheduled day thereafter. The employer finally replaced her on May 8, 2010.

Shalynn Zollars has received unemployment benefits since filing a claim with an effective date of May 2, 2010.

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 maintains she was fired but there is nothing in the record to support this. Ms. Zollars stated the pizza delivery driver told her she was fired via text message but did not explain how a delivery driver would have the authority to fire her. In addition, she did not provide any documentation of that text message to verify what it said or when it was sent.

Mr. Brensel has the authority to fire her and no one has testified, either the claimant, her witness or Mr. Brensel himself, he told her she was fired. He did tell the claimant's mother she was "dead to him" in regard to their personal relationship but that is not the same as saying she was fired.

The record establishes the claimant quit by refusing to come to work after April 28, 2010. After ten days of the claimant being no-call/no-show to work the employer may reasonably assume she quit and replace her. She quit rather than work with her ex-boyfriend but was not fired. Her resignation was without good cause attributable to the employer and she is disqualified.

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 25, 2010, reference 01, is reversed. Shalynn Zollars 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