

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THERESA R LITTLE
Claimant

APPEAL NO. 07A-UI-00133-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIRK MILTON SCHAPPAUGH
BOONE COUNTRY KITCHEN
Employer

OC: 12/03/06 R: 02
Claimant: Appellant (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Theresa Little, filed an appeal from a decision dated December 28, 2006, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held in Des Moines, Iowa, on January 30, 2007. The claimant participated on her own behalf. The employer, Boone Country Kitchen, was paged in the main waiting area at 9:30 a.m. and again at 9:50 a.m. No one responded and the employer did not participate.

ISSUE:

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

FINDINGS OF FACT:

Theresa Little was employed by Boone Country Kitchen from March 3, 2004 until December 7, 2006. She was a full-time waitress. The evening of December 6, 2006, Owner Kirk Schappaugh, called her and asked her if it was true she was getting a restraining order against a customer. Ms. Little said that she had been looking into it as because the customer was “troublesome” to wait on. Mr. Schappaugh said at that time she should “find other employment.”

The restaurant is owned by the claimant's sister and her husband. Later the evening the claimant's sister, Tammy Schappaugh, called her and said that her husband had handled the entire matter “wrong.” At the end of the conversation with her sister, Ms. Little believed she still had a job. She was scheduled to work at 6:00 a.m. the next morning and when she was preparing to leave for work she found two messages on her answering machine from her niece, Sonja Schappaugh, who is the assistant manager. She had called to get the key because she had locked herself out of the restaurant and wanted the claimant to bring her key so she could open. The message was somewhat abrupt and told the claimant that whatever problem she was having with owner was not Sonja's fault. The claimant was put off by the message and did not bring in the key. She said she was waiting for Kirk Schappaugh to call her and when he did not, she therefore assumed she had been fired.

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 knew she had not been fired on December 6, 2006. The conversation with her sister straightened the matter out and it was agreed that Kirk Schappaugh had overreacted to the situation. The claimant believed she was still employed and was preparing to go to work as scheduled on December 7, 2006. She was apparently angry with the message left by the assistant manager and elected not to return to work. This was not a discharge but a decision to not continue working. The claimant apparently did not like to be chastised by the owner because she was checking into a restraining order against a customer. The administrative law judge can understand why such a possible action as a restraining order by a waitress against a customer would be of concern to the employer. This would substantially interfere with business but the claimant was not discharged because of it as she was notified by her sister, the co-owner, she still had a job.

The record establishes the claimant did not have good cause attributable to employer for quitting and she is disqualified.

DECISION:

The representative's decision of December 28, 2006, reference 01, is affirmed. Theresa Little is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css