

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOYCE CRAVENS

Claimant

APPEAL NO: 09A-UI-18228-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARRIOTT HOTEL SERVICES INC

Employer

OC: 11-01-09

Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 25, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on January 13, 2010. The claimant participated in the hearing. Jody Shannon, Human Resources Manager and Ken Trainer, Executive Chef, participated in the hearing on behalf of the employer. Employer's Exhibits One through Eight were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time dishwasher for Marriott Hotel Services from February 13, 2009 to October 30, 2009. She voluntarily quit her job and cited three reasons for doing so. The first reason was that Line Cook Salim Safsaf repeatedly told her that he had permission to send her home and could get her fired if she did not do what he wanted her to do and continued to ask questions and give him a "hard time" (Employer's Exhibits Three and Four). The employer met with the claimant and Mr. Safsaf August 26, 2009, about the situation and while Mr. Safsaf denied making those comments the employer told him if he did so it was unacceptable (Employer's Exhibit One). The second reason given was that temporary worker Harry came to work drunk several times. She stated he was sent home on at least two occasions but she never told the employer about the situation at the time it was occurring so the employer could investigate. Chef Ken Trainer told the supervisors to watch Harry to see if he appeared intoxicated and to be more observant of the dishwashing area but he did not receive any reports regarding Harry drinking before or during work and the employer found Harry to be one of their best temporary workers. The final reason, and the most important according to the claimant, occurred October 17, 2009, at Brown Deer Golf Course where the employer was catering an event. The claimant reported to Banquet Captain Brittney Knipp that temporary

dishwashing employee Rick was making her “extremely uncomfortable” by standing behind her and rubbing and pushing against her and following her around the banquet site, even waiting for her outside the women’s restroom (Employer’s Exhibit Seven). Ms. Knipp could see the claimant was “very emotionally troubled by the situation” and as a result Ms. Knipp sent Rick home immediately and the employer told Rick’s temporary agency employer that it did not want him to return to work for them in any capacity (Employer’s Exhibits Seven and Eight). The claimant suffered from post traumatic stress disorder (PTSD) from being “severely abused in the past” and because of Rick’s actions she was “crying and shaking all the time, afraid to leave the house without her husband, and afraid to go to work.” She had a panic attack October 23, 2009, and the employer sent her to its employee assistance program and she was referred to a counselor. She had one session with that counselor before finding her own counselor who told her the work environment was “not a good situation for (her) to be in” but did not tell her she should quit her job. On October 30, 2009, the claimant told the employer she was “too stressed out” to continue her employment with Marriott.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant complained that Mr. Safsaf repeatedly told her he could go to Mr. Trainer and tell him the claimant was not doing her job and have her fired. She made the employer aware of the situation and the employer made it a high priority and held a meeting with both the claimant and Mr. Safsaf to resolve the situation and the claimant did not report any further problems with Mr. Safsaf. The claimant also testified that temporary employee Harry was intoxicated at work. She told the employer about her concerns at a time when Harry was either not present or not drinking. The employer instructed its supervisors to keep a close eye on Harry but there were no reports that he smelled of alcohol or appeared drunk at work and the employer felt that Harry was the best temporary employee it had working for it. While the claimant had a disturbing experience working with temporary worker Rick during a catering off the employer’s premises October 17, 2009, the employer took immediate steps to resolve the problem by sending Rick home before the end of his shift and telling the temporary agency employer he could never return to the Marriott to work in any capacity. The claimant returned to work after the incident and also attended counseling. Her counselor, whom it would appear would have the most knowledge of the claimant’s emotional state and her PTSD and be in the best position to determine if she should continue her

employment, said it was not a good situation for the claimant to be in but did not tell her she should leave her job. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d. 827 (Florida App. 1973). While not finding the claimant "overly sensitive" due to the fact she had PTSD and was understandably more upset than the average person would likely have been over the situation with Rick, the administrative law judge concludes the employer did everything within its power to remedy the situation to make the claimant comfortable in the workplace and it appears there was nothing the employer could have done to accomplish that feat because of her PTSD. The claimant's reaction was not the response of the average person but rather particular to the claimant. Because the employer responded to every situation reported by the claimant in a prompt and effective manner in an effort to satisfy and protect the claimant and the fact that the claimant's counselor did not advise her to leave her job, the administrative law judge must conclude the claimant's leaving was not for good cause attributable to the employer as defined by Iowa law. Therefore, benefits must be 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 section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The November 25, 2009, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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