

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZISAUNDRUS CANADY-GROVER
Claimant

APPEAL NO. 09A-UI-15325-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURGER KING CORPORATION
Employer

**Original Claim: 09-13-09
Claimant: Respondent (2-R)**

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 October 2, 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 November 12, 2009. The claimant participated in the hearing. Carrie Ellis, General Manager, participated in the hearing on behalf of the employer.

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 part-time crew member for Burger King from June 17, 2008 to September 10, 2009. On September 7, 2009, the claimant's babysitter called the employer 45 minutes before the start of the claimant's shift and said she would not be in because she went to the hospital, as she thought she was having a miscarriage. The employer told the babysitter to notify the claimant she needed a doctor's note to return to work. On September 8, 2009, the claimant arrived for her 8:00 a.m. shift and the assistant manager asked if she had a doctor's note. She did not have one and he instructed her to go get one so she could return to work and the claimant left and never returned. The claimant testified her physician did not provide the note until the end of her shift but in the meantime she received a text message from a shift leader asking if she was angry with him because her employment was terminated. The shift leaders have the authority to discharge employees with approval of the general manager, but the general manager had no intention of terminating the claimant's employment at that time. The claimant assumed she was fired without calling and talking to the general manager and telling her she had a doctor's note. She never returned to the employer or called to find out the status of her job.

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.

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. In this case, the claimant assumed she was discharged because of a text message from a shift leader. While shift leaders have the authority to fire people, the general manager had not authorized the claimant's termination and had no plans to let her go until she failed to show up for work or call the employer after September 8, 2009. The claimant should not have assumed her employment was over without at least checking with the general manager to determine her employment status, especially in light of the fact she had secured a doctor's note. Because the claimant failed to do that, she did not have the opportunity to tell the employer about the doctor's note and likely continue her employment. Under these circumstances, the administrative law judge must conclude the claimant has not demonstrated that her leaving was for good cause attributable to the employer as required 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 October 2, 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. 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw