

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDACE J BOSSARD
Claimant

APPEAL NO. 09A-UI-07302-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCSOIFER'S INC
Employer

OC: 04/19/09
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

McSoifer's Inc. filed an appeal from a representative's decision dated May 12, 2009, reference 01, which held that no disqualification would be imposed regarding Candace Bossard's separation from employment. After due notice was issued, a hearing was held by telephone on June 5, 2009. Ms. Bossard participated personally. The employer participated by Sam Soifer, President; Jodi Betsinger, Manager; and Brandy Sorenson, Second Assistant.

ISSUE:

At issue in this matter is whether Ms. Bossard was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Bossard was employed by McSoifer's, Inc., doing business as McDonald's, from December 17, 2008 until April 19, 2009. She voluntarily quit the employment because she did not like the way she was treated by others at the workplace.

Ms. Bossard was over an hour late reporting for work on April 18. The manager, Jodi Betsinger, was angry because she had not called to report that she would be late. At some point, Ms. Bossard asked the manager if she should make more coffee. Ms. Betsinger responded by saying "ya think?" At another point, Ms. Bossard was making a list of items to be stocked. Ms. Betsinger commented that there would not have been a stocking problem if Ms. Bossard had not been late that morning. Ms. Bossard did not return to work at the scheduled time the next day. When contacted, she indicated she was quitting because she could not handle the treatment at work.

Ms. Bossard did not like the manner in which she was sent home on some occasions. The managers did not always explain why she was being sent home. She was sent home one to two times a week if business was slow and her services were not needed. The person who arrives at work first is usually the first to be sent home when work slows down. Ms. Bossard

would usually be sent home no more than 15 to 30 minutes early. Sometimes the managers would simply tell her she could leave. Ms. Bossard did not like the fact that the managers would sometimes take her headset and move her to different locations. The employer moves individuals around so that they are in the areas they are most competent in during busy times.

In January of 2009, Ms. Bossard had plans to quit to take work elsewhere. Ms. Betsinger asked her to stay and told her she would have 40 hours of work each week. Thereafter, she averaged 79.77 hours per two-week pay period. She had her performance review on April 15, during which she was told she was doing a good job and was given a raise. She never told anyone that she was thinking about quitting because of any work-related problems. She never brought her problems to the attention of her manager's supervisor who was present several times during each week. Nor did she bring any problems to the attention of the owner who was in the restaurant at least once a week. Continued work would have been available if Ms. Bossard had not quit.

Ms. Bossard filed a claim for job insurance benefits effective April 19, 2009. She has received a total of \$1,666.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). For reasons that follow, the administrative law judge concludes that Ms. Bossard did not have good cause attributable to the employer for quitting. Ms. Betsinger did not dispute that she was angry with Ms. Bossard for being late without notice on April 18. However, her comments to Ms. Bossard regarding the coffee and the stocking were not clearly inappropriate. Her comments fell far short of being abusive. Although the managers may not have always explained why she was being sent home early, the administrative law judge believes Ms. Bossard knew or should have known it was due to the fact that business had slowed down and the full crew was no longer needed. The only reason her headset was taken and she was moved was to enable the employer to place the most efficient crew members where they were needed most during peak times.

Ms. Bossard never put the employer on notice of any work-related problems. Therefore, she deprived the employer of the opportunity to address and possibly resolve those problems. She could have taken her concerns to Ms. Betsinger, Ms. Betsinger's supervisor, or to the owner of the business. None of the problems identified by Ms. Bossard were so critical that she was justified in quitting without giving the employer an opportunity to try to salvage the employment relationship. Because the employer was not given a fair and reasonable effort to address her problems, Ms. Bossard's quit was not for good cause attributable to the employer. Accordingly, benefits are denied.

Ms. Bossard has received benefits since filing her claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated May 12, 2009, reference 01, is hereby reversed. Ms. Bossard quit her employment with McDonald's for no good cause attributable to the employer. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Bossard will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs