

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARIDAD A TOBIAS

Claimant

APPEAL NO. 07A-UI-03204-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC

Employer

**OC: 02-25-07 R: 01
Claimant: Respondent (2)**

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 March 19, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 12, 2007. The claimant did participate. The employer did participate through Betty Phillips, Dietary Manager, and (representative) Ken Pook, Administrator. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct or did she voluntarily quit her employment without good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a cook for three days per week and as a housekeeper two days per week full time beginning April 25, 2005 through February 22, 2007, when she voluntarily quit by walking off the job.

On February 22, 2007 the claimant was making bananas and pineapple for the residents to eat. Some of the residents are required to eat a diet that is composed of pineapple chunks and some are only allowed to eat pineapple tidbits. The claimant made the recipe using only the pineapple chunks. When another cook told Ms. Phillips that the claimant was not making the recipe correctly and was only making the recipe using the pineapple chunks, Ms. Phillips went into the kitchen to investigate. The claimant was required to make the dessert two separate ways to accommodate those residents whose diets required smaller pieces of pineapple. When Ms. Phillips went into the kitchen she noticed that the claimant had made the dessert using only pineapple chunks. Ms. Phillips asked the claimant if she had consulted the recipe book when making the dessert and she pulled the recipe book off the shelf. The recipe calls for the dessert to be made two separate ways to accommodate those residents who eat a mechanically altered diet. When Ms. Phillips instructed the claimant that she would also need to make the dessert

using pineapple tidbits instead of chunks, the claimant became angry and walked out of the kitchen. She returned to the kitchen and began arguing with Ms. Phillips about how she performed her job. The claimant then started to leave the kitchen again taking her keys out of the drawer. Ms. Phillips told her that if she left she should not come back, because she would consider her to have abandoned her job. The claimant left the kitchen, taking her keys with her. Ms. Phillips did not instruct her to leave. Continued work was available for the claimant had she not walked off the job after being instructed on how to make the dessert correctly.

In the past the claimant had consulted the recipe book and had correctly made the pineapple and banana dessert using both the pineapple chunks and tidbits.

Claimant has received unemployment benefits since filing a claim with an effective date of February 25, 2007.

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.

871 IAC 24.25(28) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

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 (amended 1998). Ms. Phillips only went into the kitchen to check on the dessert recipe when another cook alerted her that the claimant was not making the recipe both ways to accommodate residents whose diets allowed only for tidbits, not chunks, of pineapple. When the claimant was instructed to make the dessert according to the employer's recipe, she became angry and walked off the job. She was told that if she walked out, she would be considered to have abandoned her job. The claimant had demonstrated an ability previously to make the dessert according to the employer's recipe book. By taking her keys and walking out before the end of her shift, the claimant evinced her desire to abandon her job. The claimant's decision to quit after having been instructed on how to make the banana/pineapple dessert was not a good-cause reason attributable to the employer for leaving. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The March 19, 2007, 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. Claimant is overpaid benefits in the amount of \$1,692.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw