

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL E SOUTH
Claimant

APPEAL NO. 07A-UI-09240-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIXTH AVE HOTEL PARTNERSHIP
Employer

OC: 09/02/07 R: 02
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Sixth Ave Hotel Partnership filed an appeal from a representative's decision dated September 28, 2007, reference 01, which held that no disqualification would be imposed regarding Michael South's separation from employment. After due notice was issued, a hearing was held by telephone on October 15, 2007. Mr. South participated personally. The employer participated by Cathy Albaugh, Human Resources Director; Bob Conley, Owner; Cheryl Overton, Controller; Gene Caleb, President; and Tom Goodman, Director of Hotel Operations.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. South was employed by Sixth Ave Hotel Partnership, doing business as Holiday Inn, beginning November 20, 2006. He was employed full time as executive chef. On September 5, 2007, the employer called a meeting because of difficulties between Mr. South and Terry Logan, the sous chef. Mr. South had given Mr. Logan a written warning on August 31 for not following instructions. The two were discussing their issues on September 5 when Mr. South announced that he was quitting. He left the room for a brief period and returned to reiterate that he was quitting. Mr. Conley advised him that the employer would not attempt to get him to stay a second time.

Mr. Conley's statement was in reference to the occasion approximately two months prior when Mr. South indicated he was quitting because of problems with Mr. Logan. At that time, Mr. Conley told him he was in charge of Mr. Logan and could take whatever disciplinary action he deemed necessary if Mr. Logan was not following instructions. Mr. Conley talked Mr. South into remaining in the employment and said he would support him in whatever actions he took regarding Mr. Logan. On September 5, Mr. Conley indicated he would not again talk him into staying. Continued work would have been available if Mr. South had not quit.

Mr. South filed a claim for job insurance benefits effective September 2, 2007. He has received a total of \$1,464.00 in benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes from all of the evidence that Mr. South initiated his separation when he announced to the group on September 5 that he was quitting. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). It appears that Mr. South quit because of difficulties with Mr. Logan. He knew he had the right, as executive chef, to discipline Mr. Logan if he was not following instructions. He also knew he had the right to discharge Mr. Logan if repeated disciplinary actions failed to change his behavior. Mr. South knew he had the support of the owner with regard to what actions he took with Mr. Logan. He chose to quit rather than exercise his authority as executive chef.

For the reasons stated herein, the administrative law judge concludes that Mr. South's quit was not for good cause attributable to the employer. The parties were in the process of working through difficulties on September 5 when he quit. Inasmuch as he quit while the employer was attempting to resolve problems between him and Mr. Logan, he did not give the employer a reasonable opportunity to correct the situation that was causing him to quit. Since the quit was without good cause attributable to the employer, benefits are denied. Mr. South has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated September 28, 2007, reference 01, is hereby reversed. Mr. South voluntarily quit his employment for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. South has been overpaid \$1,464.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css