

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EVANGELA M MATLOCK**  
Claimant

**APPEAL NO. 12A-UI-12862-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIRE MOUNTAIN RESTAURANTS LLC**  
Employer

**OC: 09/09/12**  
**Claimant: Respondent (2-R)**

Section 96.5(1) – Quit

**STATEMENT OF THE CASE:**

The employer, Fire Mountain Restaurants LLC, filed an appeal from a decision dated October 16, 2012, reference 01. The decision allowed benefits to the claimant, Evangela Matlock. After due notice was issued, a hearing was held by telephone conference call on November 28, 2012. The claimant participated on her own behalf. The employer participated by General Manager Lou Lynxwiler.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

Evangela Matlock was employed by Fire Mountain from March 9 until September 12, 2012 as a full-time baker. She has submitted a written resignation to General Manager Lou Lynxwiler on September 10, 2012, stating her last day of work would be October 4, 2012, because she was moving out of town.

On September 12, 2012, she came to work and was punched in for about two minutes before she turned around and left. The claimant had complained to the general manager in the past because she felt the other shift was not doing the required work which increased her work load when she arrived. Mr. Lynxwiler had said she did not have responsibility for just the “back of the house” but for the “front” as well and the other shift had complained as well about her not doing her required job duties.

Evangela Matlock has received unemployment benefits since filing a claim with an effective date of September 9, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

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(2) and (21) 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:

(2) The claimant moved to a different locality.

(21) The claimant left because of dissatisfaction with the work environment.

The claimant turned in her original resignation because she was moving out of town. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer.

Her decision to quit three weeks earlier than originally planned was because she felt the employer was not addressing her concerns about the other staff not doing their share of the work. But this was a two-way street which the general manager had attempted to explain to her without success. She quit because of dissatisfaction with the manner in which the employer had divided the duties. This is also not good cause attributable to the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue

of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of October 16, 2012, reference 01, is reversed. Evangela Matlock is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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