

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEATHER M JACKSON
Claimant

APPEAL NO. 09A-UI-08655-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALDS
Employer

OC: 05/17/09
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, McDonalds, filed an appeal from a decision dated June 15, 2009, reference 01. The decision allowed benefits to the claimant, Aleather Jackson. After due notice was issued a hearing was held by telephone conference call on July 1, 2009. The claimant participated on her own behalf. The employer participated by Owner Donna Mann and Store Manager Kristi Wallerich.

ISSUE:

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

FINDINGS OF FACT:

Aleather Jackson was employed by McDonalds from August 18, 2008 until November 29, 2008 as a part-time crew member. On November 29, 2008, the shift manager, Mark Gerst, left a note for Store Manager Kristi Wallerich that the claimant had refused to do the dishes before she left the night before, even though she had been directed to do so.

Ms. Jackson called Ms. Wallerich on November 30, 2008, to say she would be absent from work. She did not call at least two hours before the start of the shift as required. Ms. Wallerich told her she must come in and talk with her about the incident the night before and needed to come in to work that day. The claimant did not appear as she had left town for personal business.

At no time after that did the claimant meet with Ms. Wallerich. Ms. Jackson did not call the manager to set up a specific time and date to meet, but she did go into the store periodically to see if the manager was there or was not too busy to meet with her.

Aleather Jackson has received unemployment benefits since filing a claim with an effective date of May 17, 2009.

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(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

The claimant was advised she was to meet with the store manager to discuss the incident of November 29, 2008. She did not do this. Rather than setting up a time and date to meet when she talked with Ms. Wallerich on November 30, 2008, she took a hit or miss approach by periodically going into the store in the hopes the manager was there or was not too busy to meet with her at that moment. This is not what the manager requested her to do. She was asked to come in to work as scheduled on November 30, 2008, to discuss the matter, which she did not do.

The record establishes the claimant did not follow instructions, either from the shift manager on November 29, 2008, or the store manager's instruction to come to work and meet with her on November 30, 2008. This can only be considered a refusal to continue working and do the work as instructed. Under the provisions of the above Administrative Code section, this is a voluntary quit without 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 June 15, 2009, reference 01, is reversed. Aleather Jackson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs