

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASEY L MARTENS
Claimant

APPEAL NO. 14A-UI-00242-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABRH LLC
Employer

OC: 09/22/13
Claimant: Respondent (2)

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

The employer, ABRH, filed an appeal from a decision dated December 30, 2013, reference 03. The decision allowed benefits to the claimant, Casey Martens. After due notice was issued a hearing was held by telephone conference call on January 30, 2014. The claimant participated on her own behalf. The employer participated by Manager Bo Basas and was represented by TALX in the person of Toni Kerr.

ISSUES:

The issue is whether the claimant quit work with good cause attributable to the employer, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

FINDINGS OF FACT:

Casey Martens was employed by ABRH from October 10 until November 10, 2013 as a part-time server. The claimant had problems with other employees "telling [her] what to do." But other employees felt she was telling them what to do even though she had not been working there very long.

On November 10, 2013, the claimant approached another co-worker, Brandi, to ask about a customer's "to go" order. Brandi told her to "get out of my face," as there was apparently some history between the two of them about who was telling whom what to do.

Ms. Martens went to the bathroom and Manager Bo Basas contacted her on the head phones. He told her she needed to get along with others if she wanted to keep her job. The claimant quit at that time.

Casey Martens has received unemployment benefits since filing a claim with an effective date of September 22, 2013. The employer did participate in the fact-finding interview.

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(6) 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:

(6) The claimant left as a result of an inability to work with other employees.

The claimant elected to quit because of problems with other employees. Her conduct at the appeal hearing indicates the claimant has an abrasive and aggressive manner. Other employees undoubtedly found this unacceptable. When Brandi told her to get out of her face, it was in response to Ms. Martin's approach to her about the customer's order. Mr. Basas simply told her to be more courteous to her co-workers if she wanted to remain working, and the claimant elected to quit.

Under the provisions of the above Administrative Code section, the claimant's inability to work with other employees does not constitute good cause attributable to the employer for quitting. She is disqualified.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The unemployment insurance decision dated December 30, 2013, reference 03, is reversed. Casey Martens 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 claimant is overpaid unemployment benefits in the amount of \$2,250.02. This must be recovered in accordance with the provisions of Iowa law.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs