

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRED F MILLER

Claimant

APPEAL NO. 07A-UI-04801-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTSIDE FAMILY DINING INC

Employer

**OC: 04/01/07 R: 02
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

Westside Family Dining, Inc. (employer) appealed a representative's May 2, 2007 decision (reference 01) that concluded Jerred F. Miller (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on May 29, 2007. The claimant participated in the hearing with his witness, Nickki Sisson. Bruce Blankenfled, Matt Blankenfled and Betty Montgomery testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked about a year as a part-time evening cook for the employer. The claimant primarily worked with and for Matt Blankenfled. Prior to March 25, 2007, the claimant's job was not in jeopardy.

On March 25, the claimant had two identical orders. He had the orders partially completed. Before the claimant told a waitress the order was up, a waitress combined the two partial orders to complete one order she was waiting to serve. The claimant did not appreciate this and talked to the waitress about what she had done. On this shift, Bruce Blankenfled was working with Matt and the claimant. In response to the commotion created by the waitress, Bruce went to the claimant and told him, "It is f___ simple." The claimant became very upset with the way Bruce talked to him and disrespected him. Bruce's comments were loud enough to be heard by customers. When the claimant became upset, he started cursing. Bruce then motioned for the claimant to leave.

The claimant became even more upset because he concluded Bruce had just fired him. When the claimant went outside, he called his girlfriend to pick him up and told her he had just been fired. Bruce had not intended to discharge the claimant, he only wanted the claimant to go outside to vent and calm down. Bruce went outside to talk to the claimant, but the claimant would not listen to what Bruce said. Finally, Bruce gave up and went back inside. The other cook, Kathy Schoborg, went outside and talked to the claimant. After Schoborg talked to the claimant, he came back into the kitchen.

The claimant asked Bruce if he had been fired. Bruce responded that he did not care if the claimant stayed or left. The claimant wanted Bruce to respect him. When Bruce did not look at the claimant and told him that his ride was there, the claimant left work and did not return.

The claimant established a claim for unemployment insurance benefits during the week of April 1, 2007. The claimant filed claims for the weeks ending April 7 through May 19, 2007. The claimant received his maximum weekly benefit amount of \$101.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts indicate that when the claimant went outside, he made a reasonable but incorrect conclusion that the employer had just discharged him. The fact the employer did not discharge the claimant is supported by the fact Bruce went outside and tried to talk to the claimant, the other cook went outside and talked to the claimant and convinced him to return to the kitchen. Even when the claimant asked the employer if he had been discharged, the employer told him it was his decision as to whether he stayed or left. The claimant was still upset and did not like the way Bruce treated him. The claimant did not believe Bruce showed him any respect when Bruce did not look at the claimant and told him that his ride had just arrived. The claimant left because he was upset with the way Bruce treated him and failed to show the claimant any respect. Neither party contacted the other after this incident. When the claimant left after the employer told him it was his decision whether he stayed or left, he quit by failing to return to work. When a claimant quits, he has the burden to establish he quit for reasons qualifying him to receive unemployment insurance benefits. Iowa Code § 96.6-2.

The facts establish the claimant had good cause to become upset with the way Bruce handled the March 25 situation. The claimant did not usually work with Bruce and this was the first time anything like this occurred. Unfortunately, during the course of an isolated hot headed incident, the claimant made the decision to leave work when Bruce did not treat him respectfully. Instead of trying to resolve his differences with Bruce, the claimant left work and did not return. The claimant's failure to return to work again amounts to a voluntarily quit for reasons that do not qualify him to receive unemployment insurance benefits. As of April 1, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending April 7 through May 19, 2007. The claimant has been overpaid \$707.00 in benefits he received for these weeks.

DECISION:

The representative's May 2, 2007 decision (reference 01) is reversed. The employer did not discharge the claimant. Instead, the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of April 1, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending April 7 through May 19, 2007. The claimant has been overpaid and must repay a total of \$707.00 in benefits he received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css