

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN L MAJESKI
Claimant

APPEAL NO. 07A-UI-04092-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING J INC
Employer

**OC: 03/25/07 R: 04
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Flying J, Inc. (employer) appealed a representative's April 12, 2007 decision (reference 01) that concluded Dawn L. Majeski (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 8, 2007. The claimant participated in the hearing. Lesley Buhler appeared 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 for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on July 14, 2006. She worked full time as a food server/cashier in the employer's Davenport, Iowa, truck stop restaurant. Her last day of work was March 16, 2007.

The claimant typically worked shifts beginning between 1:30 p.m. and 2:00 p.m. and ending between 9:00 p.m. and 10:00 p.m., Tuesday through Friday. On March 16 the claimant was scheduled to work beginning at 2:00 p.m. When she reported for work she was given a write-up by the assistant manager for an absence for which she had called in late and not presented a sufficient doctor's note. The claimant then overheard the assistant manager discussing whether to put the claimant into the cashier position that night instead of serving, which would mean that the claimant would be unable to earn tips. The employer normally cycled the employees through the cashiering position during the week, but the claimant had called in an absence earlier in the week when she had been scheduled to cashier, and another person who had been scheduled to be a server had cashiered that night instead; that same person was scheduled to cashier on March 16, so the assistant manager was mulling switching that person to serving to even out the cycle. When the claimant overheard this discussion, she told the assistant manager that if she was asked to cashier she was going to "walk." The assistant manager

responded that if the claimant walked off the job she would be deemed to have quit. The claimant determined that the assistant manager was being rude and was in fact going to shift her to cashier, and as she needed the tip money to buy diapers, she determined to leave, doing so at approximately 2:45 p.m. She called Mr. Moninski, the general manager, and left him a message at approximately 3:00 p.m. informing him she had left and why; when he returned the call the next day, he confirmed that since she had walked off the job, she was deemed to have quit.

The claimant established a claim for unemployment insurance benefits effective March 25, 2007. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$904.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

Iowa Code § 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), (28) 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 § 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 § 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.

(28) The claimant left after being reprimanded.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out by walking out after being advised that doing so would be deemed quitting. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied her burden. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's April 12, 2007 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 16, 2007, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$904.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw