

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATASHA D WILLIAMS

Claimant

APPEAL NO. 08A-UI-07178-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RISKYS SPORTS BAR & GRILL

Employer

**OC: 06/15/08 R: 12
Claimant: Respondent (2-R)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated August 4, 2008, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 25, 2008. Although the claimant submitted her telephone number, she was not available at the telephone number provided. The employer participated by Terri Todd, Manager.

ISSUES:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from November 2007 until June 12, 2008 as a part-time server. Ms. Williams was paid by the hour. Her immediate supervisor was Ms. Terri Todd.

The claimant voluntarily quit her employment when she quit reporting for scheduled work without providing any advanced notice to the employer. Ms. Williams last worked on June 12, 2008 and picked up her paycheck early that day. Although the claimant specifically indicated that she would report for the evening shift on that date she did not do so and provided no notification to the employer. The claimant did not report or notify the employer for three or more consecutive work shifts leading the employer to the reasonable conclusion that the claimant had chosen to leave employment voluntarily.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment

insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code section 96.5-1.

The claimant demonstrated an intention to voluntarily quit her employment when she discontinued reporting for scheduled work and provided no notification to the employer and did not report for scheduled work for three or more consecutive work shifts.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. The claimant failed to participate in the hearing and has not satisfied that burden. Benefits are denied.

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(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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.

DECISION:

The representative's August 4, 2008, reference 02, decision is reversed. The claimant voluntarily quit her employment for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided that she is otherwise eligible. The matter of potential overpayment is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment and whether the claimant will have to repay the benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs