

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA M NIEDERT
Claimant

APPEAL NO. 12A-UI-02498-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NPC INTERNATIONAL
PIZZA HUT**
Employer

OC: 01/15/12
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Pizza Hut, filed an appeal from a decision dated February 29, 2012, reference 01. The decision allowed benefits to the claimant, Angela Niedert. After due notice was issued a hearing was held by telephone conference call on March 29, 2012. The claimant participated on her own behalf. The employer participated by Human Resources Leader Kathy DeWald.

ISSUE:

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

FINDINGS OF FACT:

Angela Niedert was employed by Pizza Hut from December 9, 2008 until January 15, 2012 as a full-time shift supervisor. She had given her manager, Kelly Kramer, a note from her doctor back in November 2011 stating she should not work more than eight hours a day and 40 hours per week. Ms. Kramer did the scheduling and consistently scheduled Ms. Niedert for ten-hour shifts and overtime as well. The claimant talked to her about it from time to time but nothing was done. Instead of going to the human resources department or Ms. Kramer's supervisor, the claimant did nothing. The phone numbers to contact the corporate office are posted in each store. Complaints are voluntary and confidential.

On January 16, 2012, Ms. Niedert sent a series of seven profanity-laced text messages to Ms. Kramer, stating she had just quit, protesting the employer had "fucking led [her] on" and used her. She demanded to know if "fucking Chris is working today" and she was "sick of this shit." Ms. Niedert told Ms. Kramer to "fuck off" because the manager did not "talk to [her] about anything." Her final message was, "I did quit, bitch." Ms. Kramer texted back at this point she was coming to the store and would accept the claimant's notice and pick up her keys. She was gone by the time the manager had arrived but before she left she had vandalized the office.

Angela Niedert has received unemployment benefits since filing a claim with an effective date of January 15, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

The record establishes the claimant quit because she was not getting the hours she thought her doctor had ordered. At no time did she try to contact the human resources office in spite of the fact the toll-free, confidential phone numbers for such complaints are posted in each store as required by company policy. While it may have been frustrating that the general manager was not responding to her concerns the claimant elected to go no further with her attempt to resolve them. The administrative law judge does not find her assertion she did not know the phone numbers or people to call to be credible.

In order for good cause attributable to the employer to exist, a claimant must make some effort to give the employer an opportunity to work out whatever problem led to the grievance. By not giving notice to the employer of the circumstances causing the decision to quit employment, the claimant failed to give the employer an opportunity to make adjustments which would alleviate the need to quit. *Denby v. Board of Review*, 567 P.2d 626 (Utah 1977).

The dislike of the shifts, the failure of other employees to show up for their shifts and other complaints were not adequately resolved due to Ms. Niedert's failure to exhaust all her options before quitting. The record establishes she did not have good cause attributable to the employer and she is disqualified.

Iowa Code § 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 February 29, 2012, reference 01, is reversed. Angela Niedert 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 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