

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GINA M SANCHEZ
Claimant

APPEAL NO: 07A-UI-09727-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CRACKER BARREL
OLD COUNTRY STORE INC**
Employer

**OC: 09/09/07 R: 01
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Cracker Barrel Old Country Store, Inc. (employer) appealed a representative's October 12, 2007 decision (reference 02) that concluded Gina M. Sanchez (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 addresses of record, a telephone hearing was held on November 14, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Scott Miller, the general manager, appeared on the employer's behalf. During the hearing, Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on July 31, 2006. The claimant worked as a part-time server. The claimant received a copy of the employer's attendance policy on July 31, 2006. (Employer Exhibit One.)

On December 30, 2006, the employer gave the claimant a failing performance evaluation because of attendance issues. (Employer Exhibit Two.) The employer planned to give the claimant another performance evaluation in March 2007. On March 10, 2007, the employer

gave the claimant a written warning for continued attendance issues. The written warning occurred after the claimant had been more than an hour late for work on March 8 and did not call or report to work on March 9. The March 10 written warning informed the claimant that her job was in jeopardy if she did not work as scheduled the next two months. (Employer Exhibit Three.) On March 15, the claimant was again an hour late for work. The claimant told the employer she had overslept.

On March 16 and 17, the claimant did not report to work as scheduled or notify the employer that she was unable to work as scheduled. The employer took the claimant off the schedule on March 18, 2007. When the claimant picked up her paycheck on March 22, she did not explain why she had not called or worked as scheduled on March 16 and 17, 2007.

The claimant established a claim for unemployment insurance benefits during the week of September 9, 2007. The claimant filed claims for the weeks ending September 15 through October 6, 2007. She received her maximum weekly benefit amount of \$126.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts presented during the hearing establish that the claimant quit her employment by failing to return to work after September 15, 2007. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive unemployment insurance benefits. Iowa Code § 96.6-2.

The claimant may have had compelling reasons for not returning to work after September 15. The evidence does not establish that she quit her employment for reasons that qualify her to receive unemployment insurance benefits. Therefore, as of September 9, 2007, the claimant is not qualified to receive unemployment insurance benefits. This disqualification continues until the claimant establishes she has earned ten times her weekly benefit amount, or \$1,260.00, after March 16, 2007. If the claimant earned this amount in wages from another insured employer, the claimant has requalified and could be eligible to receive benefits.

Based on the information presented during the hearing, the claimant is not legally entitled to receive benefits for the weeks ending September 15 through October 6, 2007. If an individual receives benefits she 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 has been overpaid \$504.00 in benefits she received for the above-mentioned weeks.

DECISION:

The representative's October 12, 2007 decision (reference 02) is reversed. The employer did not discharge the claimant. Instead, the claimant voluntarily quit her employment by abandoning it after March 15, 2007. The claimant quit for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of September 9, 2007. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. Based on the evidence presented during the hearing, the claimant is not legally entitled to receive benefits for the

weeks ending September 15 through October 6, 2007. The claimant has been overpaid and must repay \$504.00 in benefits she received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw