

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA D YEAKEY
Claimant

APPEAL NO. 06O-UI-08504-N

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

TURN 2 RESTAURANT & LOUNGE
Employer

**OC: 03-05-06 R: 04
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the fact-finder's decision dated March 22, 2006, reference 01, which held the claimant ineligible for unemployment insurance benefits. After notice was provided a hearing was conducted on June 12, 2006. The employer did not appear because the employer did not receive notice of the hearing through no fault of the employer. The Iowa Employment Appeal Board remanded the matter for rehearing. After due notice, a hearing was conducted in Burlington, Iowa on November 8, 2006. Appearing as a witness for the claimant was Russell Brockert, claimant's fiancé. Appearing on behalf of the claimant was her attorney, Mr. Timothy Wink. Appearing on behalf of the employer was Mr. William Jahn, their attorney. Appearing as witnesses were Jon Fye, Co-Owner, Mindee Hutchinson, Waitress/Bartender, and Ron Kastner, Manager. Exhibits One and Two were received into evidence.

ISSUE:

The issue in this matter is whether the claimant quit for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: Ms. Yeakey was employed by Turn 2 Restaurant and Lounge from January 18, 2006 until March 6, 2006 as a part-time waitress. The claimant was paid by the hour. Her immediate supervisor was Ron Kastner, Manager. Ms. Yeakey quit her job with Turn 2 Restaurant and Lounge because she felt she was sexually harassed by her manager, Ron Kastner and because she disagreed with scheduling that required her to work at times on weekends. The claimant desired to spend more time at home with her children. On March 6, 2006, the claimant left work early, indicating dissatisfaction with scheduling and the conduct of the facilities manager.

On or about September 28, 2006, the claimant and her fiancé were in the restaurant eating dinner. Mr. Kastner visited with the claimant and her fiancé and during the course of the conversation stated that the claimant "cleaned up very well." Ms. Yeakey was uncomfortable with the statement but did not complain. On another occasion, Mr. Kastner was asked to get

hot water pots for tea and he responded to the claimant, "What are you going to do for me?" The manager often uses this phrase in the restaurant and Ms. Yeakey, at the time, did not indicate any complaint or dissatisfaction.

On March 6, 2006, Mr. Kastner inadvertently bumped into the claimant's arm in a cooler area. Later that day while the claimant and Mindee Hutchinson were wrapping silverware at a table, Mr. Kastner joined them momentarily. While at the table, Mr. Kastner's foot bumped or rubbed the claimant's leg on two occasions whereupon the claimant got up and moved to a waitress station without confronting or making any comments to the manager. During this time the claimant noted that she had been scheduled to work on the following Saturday. Ms. Yeakey disagreed with the manager scheduling her on a weekend as she believed that she normally would only be required to work on weekdays per her request. Ms. Yeakey left early after she completed her duties on March 6, 2006 and informed "Janet" the bartender about her dissatisfactions.

On March 7, 2006, a company co-owner, Jon Fye, was informed by the bartender of the claimant's statements and her desire to speak with Mr. Fye. Mr. Fye called the claimant and during the conversation Ms. Yeakey first complained that the manager had scheduled her for Saturdays stating that the claimant needed to be home for her five children. The claimant then stated that "Ron had rubbed her leg." The claimant then stated that she was not going to do anything or make it an issue citing a previous similar problem that had occurred while employed by a different company. Ms. Yeakey concluded her comments by stating, "You have a great restaurant, and I don't want to hurt it but I can't work with Ron." During the conversation the claimant had appeared to be angry at first but had calmed as the conversation progressed and was amicable at the conclusion of the telephone call. Based upon the claimant's statements referencing her desire to be home with her children the possibility of returning to other employment and her stated dissatisfaction with working with Mr. Kastner, Mr. Fye reasonably concluded the claimant had relinquished her position with the company. Mr. Fye was not aware that the claimant expected he would re-contact her after the final telephone call for any reason and had no further contact. Ms. Yeakey did not report back to the facility to resume employment or otherwise again contact the employer.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Yeakey was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for a good cause attributable to the employer. Iowa Code section 96.5(1). In order to establish good cause for leaving one's employment, the reasons must be necessitous and compelling and arise out of the employment relationship itself. In addition, in most cases, an employee must provide notice to the employer of the unsatisfactory working condition or circumstance allowing the employer sufficient opportunity to take corrective measures which would enable the employee to remain employed.

In this case the hearing record establishes that Ms. Yeakey was upset at a number of job circumstances on March 6, 2006. These included: being required to work a Saturday by her manager, in violation of what the claimant felt was a recent agreement that she would only work weekdays. Ms. Yeakey's sensitivities had been heightened based upon a number of events that had occurred in recent days. Mr. Kastner had made a generalized comment about the claimant's looks in the presence of the claimant's fiancé, Mr. Kastner had repeated a phrase that he often used, "What are you going to do for me?" in response to a request that Ms. Yeakey had made, Mr. Kastner had bumped the claimant's arm in a cooler area, and finally there had

been contact between Mr. Kastner's foot and the claimant's leg while the three individuals were seated in the dining area. The evidence establishes Ms. Yeakey did not bring any of these matters to the attention of Mr. Kastner at the time that they occurred. Instead, after considering the matter, Ms. Yeakey left her work earlier than usual on March 6, 2006, specifically indicating her dissatisfactions to a bartender and stating she wished Mr. Fye would call her. The claimant did not report for scheduled work the next morning and was subsequently called by Mr. Fye.

The hearing record establishes that during the telephone call the claimant was upset, initially focusing on the requirement that she work a weekend day and its effect upon her five children and then stating the actions of Mr. Kastner that were upsetting. The telephone conversation culminated with Ms. Yeakey wishing Mr. Fye well in his business venture, indicating that she would not pursue the matter further and making a reference to returning to employment with a previous seasonal employer. It is the opinion of the administrative law judge that Mr. Fye was reasonable in concluding that the claimant had already made her decision to leave and had left employment at that juncture.

Although Mr. Fye considered the claimant to be a good and valued employee and was willing to make changes necessary to accommodate the claimant and to re-address her grievances, Mr. Fye reasonably concluded that the claimant had chosen to leave employment and did not intend to return. Mr. Fye nevertheless warned Mr. Kastner about the conduct that the claimant had complained of.

It is the opinion of the administrative law judge based upon the evidence in the record that the claimant had chosen to voluntarily relinquish her position with the company effective March 6, 2006, when she left employment and did not report the following day for scheduled work. At that time the claimant had not provided company management with notice of her areas of dissatisfaction and had not given the employer an opportunity to make the necessary corrections. The administrative law judge must therefore rule the claimant left her employment for reasons that are disqualifying under the provisions of the Iowa Employment Security Law.

Iowa Code section 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.

The claimant has received benefits to which she was not entitled. These benefits must be repaid in accordance to Iowa law.

DECISION:

The representative's decision dated March 22, 2006, reference 01, is hereby affirmed. Ms. Yeakey did not provide her employer with notice of her dissatisfaction or an opportunity to correct it before leaving and her leaving therefore took place under disqualifying conditions. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, providing the claimant is otherwise eligible. The claimant is overpaid \$4,948.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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