

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASIM T TAWIL
Claimant

APPEAL NO. 11A-UI-10516-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRE MOUNTAIN RESTAURANTS LLC
Employer

OC: 07/03/11
Claimant: Respondent (2-R)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 3, 2011, reference 02, that concluded he voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on September 8, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. John Anderson participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked part time for the employer as a buffet worker from October 1, 2010 to April 29, 2011. Anderson is the general manager at the restaurant.

On April 29, 2011, the claimant informed Anderson that he was quitting his job to move to Texas. The claimant did not state that he was leaving work due to any reasons attributable to the employer. Prior to April 29, the claimant had not complained to management about any intolerable or detrimental working conditions.

Continuing work was available to the claimant when he left employment. Anderson would rehire the claimant if he offered to return to work.

The claimant has filed for and received unemployment insurance benefits for the weeks between July 3 and September 3, 2011.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

The claimant left employment without good cause attributable to the employer. No intolerable working conditions or other good cause for leaving employment has been established

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated August 3, 2011, reference 02, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css