

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHENIE S TIMS
Claimant

APPEAL NO. 09A-UI-01951-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NELLIS MANAGEMENT COMPANY
Employer

**Original Claim: 11/23/08
Claimant: Respondent (2-R)**

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 28, 2009, reference 02, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on February 16, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Sandy Selby participated in the hearing on behalf of the employer.

ISSUE:

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

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked as a cook for the employer from July 20, 2005, to June 11, 2008. Sandy Selby was the restaurant manager and the claimant's supervisor.

The claimant quit her employment on June 11, 2008, because (1) she was training to become a crew chief and believed Selby had hired someone to take her training position, (2) she believed that chicken and fish were being allowed to thaw out and were being used the next day instead of being discarded, and (3) she was afraid to work in the restaurant because of an attempted robbery in May 2008 while she and Selby were working.

The training program involved training modules that you could do on your own. Shelby had not taken any action to prevent the claimant from taking the training modules to continue to train for a higher position in the company.

Shelby never instructed the claimant to use chicken or fish that had been left out overnight or that would have created a health hazard.

After the robbery, the claimant continued to work for the employer over about a month. She was not exposed to any unusual risk to her safety and would not have had to work in the restaurant by herself.

The claimant has received unemployment insurance benefits since filing her claim effective November 23, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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.

The claimant has not proven detrimental working conditions or other good cause attributable to the employer for leaving employment.

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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 determining 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 January 28, 2009, reference 02, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of determining 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/kjw