

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

PATRICIA J MALY  
1027 LUSTER LN  
DES MOINES IA 50315

FAZOLIS RESTAURANTS INC  
c/o THOMAS & THORNGREN INC  
PO BOX 280100  
NASHVILLE TN 37228-0100

Appeal Number: 04A-UI-02231-RT  
OC: 01-25-04 R: 02  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The employer, Fazoli's Restaurants, Inc., filed a timely appeal from an unemployment insurance decision dated February 20, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Patricia J. Maly. After due notice was issued, a telephone hearing was held on March 17, 2004 with the claimant participating. JoAnne Stephanek was available to testify for the claimant but not called because her testimony would have been repetitive and unnecessary. Geoff Willson, General Manager, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer first full-time and then part-time, most recently as an associate trainer/cashier, from October 17, 1995 until she voluntarily quit on January 26, 2004. For the last five years, the claimant worked part-time, 27½ hours per week all hours in the daytime. On January 23, 2004, the claimant was informed by the employer's witness, Geoff Willson, General Manager, that her hours were going to be cut 7½ per week or 15 hours over a two-week pay period. Her hours were going to be cut to save labor costs. The claimant expressed concerns to him at that time and implied, at least, that she would quit if the reduction in hours was required. The next day, January 24, 2004, the claimant brought in her uniforms thinking that the hours were going to be established. Mr. Willson told the claimant to reconsider, that he did not want her to quit. At some point, Mr. Wilson said he would double check about the reduction in her hours. On January 26, 2004, the claimant and Mr. Willson again spoke on the telephone and the claimant was informed that her hours would definitely be cut and the claimant quit. It was possible for the claimant to regain her hours but it would have to be at night and the claimant had never worked at night for the last five years. There were no other reasons for the claimant's quit other than the reduction in hours. Pursuant to her claim for unemployment insurance benefits filed effective January 25, 2004, the claimant has received unemployment insurance benefits in the amount of \$931.00 as follows: \$133.00 per week for seven weeks from benefit week ending January 31, 2004 to benefit week ending March 13, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.
2. Whether the claimant is overpaid unemployment insurance benefits. She is not.

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.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The parties concede that the claimant left her employment voluntarily. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. In the most relevant and important parts of their testimony, the testimony of the parties are similar. After working at least five years part-time, 27½ hours per week all in the daytime, the claimant was informed on January 23, 2004 that her hours would be cut 7½ hours per week, leaving her to work 20 hours per week. The claimant might be able to make up those hours but at night but the claimant had always worked during the daytime. The claimant expressed concerns at that time about the reduction in hours and at least implied that she would quit. The claimant then attempted to quit the next day, January 24, 2004, believing that the hours were being forced on her. The claimant was asked to reconsider and did so until January 26, 2004 when it was confirmed to her that her hours would change and then she quit. There was no other reason for the claimant's quit. The claimant's hours were changed to save labor costs. Because of the claimant's long history with the employer and, the fact that for at least five years she had worked 27½ hours per week in the daytime, the administrative law judge concludes that the reduction in the claimant's hours was a willful breach of her contract of hire as amended which breach is substantial involving working hours and remuneration. Even if the claimant was able to make up the reduction in hours by working at night, this was also a substantial change in her contract of hire because she had been hired and had worked throughout her employment during the day. The claimant expressed concerns to the employer as soon as she learned about the hours and, at least at some point, indicated an intention to quit prior to her quit. The hours were not changed and the claimant quit.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily with good cause attributable to the employer, and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$931.00 since separating from the employer herein on or about January 26, 2004 and filing for such benefits effective January 25, 2004. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision of February 20, 2004, reference 01, is affirmed. The claimant, Patricia J. Maly, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible. As a result of this decision, the claimant is not overpaid any unemployment insurance benefits arising out of her separation from the employer herein.

tjc/b