

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHIRLEY A ADNEY
Claimant

APPEAL NO. 10A-UI-17047-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FIRE MOUNTAIN RESTAURANTS LLC
RYAN'S FAMILY STEAKHOUSE**
Employer

**OC: 11/14/10
Claimant: Appellant (5)**

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Shirley A. Adney (claimant) appealed a representative's December 7, 2010 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Fire Mountain Restaurants, L.L.C./Ryan's Family Steakhouse (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 25, 2011. This appeal was consolidated for hearing with one related appeal, 10A-UI-17046-DT. The claimant participated in the hearing. Gary Runyan appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 14, 2008. She worked part-time (30 or more hours per week) as server at the employer's Cedar Rapids, Iowa restaurant. She typically worked early morning shifts on Saturdays and Sundays, then mid-morning shifts on the other days of the week, with Wednesdays off. Her last day of work was October 29, 2010.

The claimant was scheduled to serve a ten-day jail sentence. It was arranged at least several weeks in advance that she would become incarcerated on the evening of October 29. However, she had arranged with the employer that she would be able to keep her employment if she could leave jail to work her regular schedule on work release.

When the claimant reported for jail on October 29, she failed a urinalysis drug test, and so was denied work release. When she called the employer that night to indicate she would not be able to report for her shifts for at least the next five days, the employer indicated that it might then not be able to retain her employment. Because of being in jail, she missed her scheduled shifts on

October 30, October 31, November 1, November 2, and November 4. On the evening of November 4, she passed another urinalysis drug test. She contacted the employer to indicate she could be released to work on November 5 and was told to check back in the morning. When she called the employer on the morning of November 5, she was told not to come in but to check back with the manager on November 6. When she did so, she was informed that the employer had determined to consider the claimant's employment ended. She finished her sentence and was released from jail on the evening of November 8.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. However, an employee is also deemed to have left without good cause if the employee is absent from work due to becoming incarcerated. 871 IAC 24.25(16). While the claimant may not have had an underlying wish to end her employment, her incarceration is deemed to be a voluntarily quit of her employment. Benefits are denied.

DECISION:

The representative's December 7, 2010 decision (reference 02) is modified with no effect on the parties. The claimant is deemed to have voluntarily left her employment without good cause attributable to the employer. As of October 30, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw