

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NETTIE M MULLEN**  
Claimant

**APPEAL NO. 10A-UI-16405-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EASTERN IOWA TJ LC  
TACO JOHN**  
Employer

**OC: 07/18/10  
Claimant: Respondent (4-R)**

Section 96.5(1)a – Quit/Other Employment

**STATEMENT OF THE CASE:**

The employer, Taco John, filed an appeal from a decision dated November 23, 2010, reference 01. The decision allowed benefits to the claimant, Nettie Mullen. After due notice was issued a hearing was held by telephone conference call on January 19, 2011. The claimant participated on her own behalf. The employer participated by Partner Eric Schryver. Exhibit One was admitted into the record.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

Nettie Mullen was employed by Taco John from August 17, 2009 until July 7, 2010 as a part-time cashier. She had taken a job with another Taco John, owned by another company, after accepting work from this restaurant. On July 5, 2010, she notified Manager Jessica Rhodes she would be unable to work on July 7, 2010, because she was already scheduled to work at the other restaurant. On that day Ms. Rhodes confronted her at the other store and demanded she work her scheduled shift at her store. The claimant declined. The employer then notified her she would be considered a voluntary quit for refusing to work her scheduled hours.

Nettie Mullen filed a claim for unemployment benefits with an effective date of July 18, 2010. She filed a weekly claim

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant quit this job in order to retain her job at the other Taco John restaurant. She was generally dissatisfied because she did not get a promotion she thought she should have gotten and her hours had been reduced. This is not good cause attributable to the employer but Ms. Mullen requalified by quitting to accept work from the other employer.

Because the claimant continued working for the other restaurant she may not have been eligible for benefits if she worked sufficient hours. This matter should be remanded to the Claims section for determination.

**DECISION:**

The representative's decision of November 23, 2010, reference 01, is modified in favor of the appellant. Nettie Mullen is qualified for benefits, provided she is otherwise eligible. The account of Eastern Iowa TJ LC shall not be charged with benefits paid to the claimant after July 7, 2010.

The issue of whether the claimant was able and available for work after her separation, or whether she was working sufficient hours with the new employer to be considered employed, is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs