

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHY A WHITE
Claimant

APPEAL NO. 10A-UI-04132-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRE MOUNTAIN RESTAURANTS LLC
Employer

**Original Claim: 01/24/10
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated March 8, 2010, reference 02, which held the claimant eligible to receive unemployment insurance benefits based upon her separation from Fire Mountain Restaurants LLC. After due notice was issued, a telephone hearing was held on April 29, 2010. The claimant participated personally. The employer participated by Ms. Edwina Aossey, assistant manager.

ISSUES:

At issue is whether the claimant left employment with good cause attributable to the employer and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Cathy White was employed as a part-time server for Fire Mountain Restaurants LLC, doing business as Ryan's Grove Buffet and Bakery, from March 2, 2009, until on or about July 9, 2009. The claimant's general supervisor was John Anderson, general manager.

Ms. White last worked on July 1, 2009. On her next working day, the claimant called in and indicated that she was too sick to work. The claimant was reminded at that time by the restaurant manager of the company rule that required employees to submit a doctor's note before returning to work after being off work due to illness. Ms. White was aware of the rule and had complied with it in the past.

The employer does not require employees to necessarily provide a note verifying the reason for their absence on that day. Under company policy, it suffices if a doctor's note is provided showing that the worker can return to work and making reference to the cause of the worker's inability to report on the workday.

Although Ms. White was aware of a number of free clinics in the area, the claimant did not provide a doctor's note as required. Ms. White called the employer over a span of a number of days. During each call, the claimant was reminded that she merely needed to present a doctor's note in order to return to work. Although the claimant had several days to do so, she did not follow the employer's

requirements as she had in the past. When the claimant did not return to work after numerous days had passed, the employer reasonably concluded that the claimant had chosen to relinquish her position with the company. Ms. White subsequently appeared to obtain her last check. The claimant turned in her uniforms and stated, "I don't want to work here."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left 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.

In general, employees are expected to follow work rules that are reasonable and known to the employee. The evidence in the record establishes that the company required restaurant workers who were too ill to report to work to provide a doctor's note upon their return verifying that they were able to return to work and at least making some reference to the reason that the employee was absent. Ms. White was aware of the rule and had followed it in the past. When the claimant called in and indicated she was too ill to work, she was reminded of her obligation to provide a doctor's note when she returned. Ms. White called the employer over a period of a number of days and, each time, the manager indicated that the claimant could return to work when she supplied the required doctor's note. The evidence in the record establishes that a number of free clinics were available to the claimant during the time period in question but that the claimant did not avail herself of them. The claimant did not take the opportunity to provide additional or extenuating information to the company's manager, but instead later turned in her uniforms and stated, "I don't want to work here anymore."

An individual who voluntarily leaves her employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions or rules must complain further if the conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer under the provisions of 871 IAC 24.26(4). The test to whether an individual has good cause attributable to the employer for leaving employment is not a subjective test as to whether the employee themselves feel they have good cause, but an objective test as to whether a reasonable person would have quit under similar circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 23 (Iowa 1988).

The administrative law judge concludes, based upon the totality of the evidence in the record and the application of the law, that Ms. White quit her employment without good cause attributable to the employer. The claimant failed to follow a known rule that she had previously followed, and the ability to obtain the required doctor's note was available to the claimant without charge. Good cause for leaving attributable to the employer has not been shown. Benefits are withheld.

The claimant has received unemployment benefits to which she is not entitled.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay the unemployment benefits she has received is remanded to the Unemployment Insurance Services Division for a determination

DECISION:

The representative's decision dated March 8, 2010, reference 02, is reversed. Cathy White is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work and is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits she has received is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/kjw