

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

MARIA E LALIBERTE
4005 – 68TH ST
URBANDALE IA 50322

FAMOUS DAVE'S RIBS INC
c/o TALX CORPORATION
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 06A-UI-02607-CT
OC: 01/22/06 R: 02
Claimant: Respondent (2)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Famous Dave's Ribs, Inc. filed an appeal from a representative's decision dated February 23, 2006, reference 01, which held that no disqualification would be imposed regarding Maria Laliberte's separation from employment. After due notice was issued, a hearing was held by telephone on March 27, 2006. Ms. Laliberte participated personally. The employer participated by Kevin Berger, General Manager, and was represented by Michelle Hawkins of Talx Corporation.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Laliberte was employed by Famous Dave's from October 16, 1999 until June 7, 2005. She worked from 20 to 32 hours each week as a hostess. She also performed cleaning duties in the restaurant. On June 7, 2005, Kevin Berger spoke to Ms. Laliberte concerning a complaint from Jamie, a coworker. Mr. Berger asked her to apologize to Jamie and she indicated she would not because she did not feel she had done anything inappropriate. When Ms. Laliberte left the office, she saw Jamie. She believed Jamie was laughing at her and, therefore, decided to quit the employment.

In the spring of 2005, Ms. Laliberte was hit by Jonathan, a coworker. He later apologized for his actions. Ms. Laliberte was unhappy with some of the servers she worked with because she sometimes, as the hostess, had to go outside to get them if they were there for smoke breaks. The servers did not have scheduled breaks and were allowed to take breaks as they found the time. Ms. Laliberte was unhappy with the fact that the managers did not always greet her and did not give compliments. She was also unhappy with the amount of cleaning work she had to perform. Ms. Laliberte had not put the employer on notice that she was considering quitting due to any work-related problems. The employer did not add duties, just reminded her when duties had not been performed. Continued work would have been available if Ms. Laliberte had not quit.

Ms. Laliberte has received a total of \$1,473.00 in job insurance benefits since filing her claim effective January 26, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Laliberte was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). For reasons that follow, the administrative law judge concludes that Ms. Laliberte's separation was not for good cause attributable to the employer. Her decision to quit was based on the fact that she thought a coworker was laughing at her. However, this was purely speculation as Ms. Laliberte was not able to overhear what was being said by Jamie. The fact that managers did not give compliments or greet her did not constitute good cause for quitting. Ms. Laliberte knew that servers needed to take breaks when they found time between waiting on customers. Therefore, she knew she would have to go outside to get them if guests arrived while they were gone. It does not appear that this was anything new in her employment.

Although Ms. Laliberte felt her cleaning duties were increased, she performed the duties without complaint and never told the employer she might quit because of the cleaning duties. Therefore, the employer had no opportunity to try to resolve her complaints before quitting.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Ms. Laliberte's separation was not for good cause attributable to the employer. Accordingly, benefits are denied. She has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representatives' decision dated February 23, 2006, reference 01, is hereby reversed. Ms. Laliberte voluntarily quit her employment for no good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Laliberte has been overpaid \$1,473.00 in job insurance benefits.

cfc/tjc