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

DEYSI E RODRIGUEZ
Claimant

APPEAL NO. 12A-UI-07256-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHANER OPERATING CORP
Employer

OC: 03/25/12
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Shaner Operating Corporation (Shaner), filed an appeal from a decision dated June 14, 2012, reference 02. The decision allowed benefits to the claimant, Deysi Rodriguez. After due notice was issued, a hearing was held by telephone conference call on July 11, 2012. The claimant participated on her own behalf and Margarita Tizano acted as interpreter . The employer participated by Director of Human Resources Sondra Riversa, Executive Chef John Andres and was represented by Corporate Cost Control in the person of Jennifer Amnot.

ISSUE:

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

FINDINGS OF FACT:

Deysi Rodriguez was employed by Shaner from October 4, 1996 until April 25, 2012 as a full-time dishwasher. Her hours of work had typically been 6:00 a.m. until 2:00 p.m. These hours were changed to 8:00 a.m. until 2:00 p.m. because the restaurant did not have enough breakfast business anymore to require a dishwasher before 8:00 a.m. Ms. Rodriguez had asked why her hours were reduced and the explanation was given to her. She was offered more work on weekends and evenings but she declined because she did not have child care.

On April 25, 2012, she again confronted Executive Chef John Andres and asked for more hours. He offered her Saturday and Sunday mornings, the only hours available. She again declined, punched out and left. She felt he was treating her "differently" and was "mean" to her but could not explain what specifically had happened to cause her to feel that way.

Deysi Rodriguez has received unemployment benefits since filing a claim with an effective date of March 25, 2012. The two weeks ending April 7, 2012, she did not receive any benefits because she reported vacation wages in excess of her weekly benefit amount. She filed an additional claim effective April 22, 2012, and received weekly benefits since that time.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant quit because she felt she was somehow being treated differently or unfairly. She was not able to state any specific incidents which caused her to feel this way except that Mr. Andres had offered her additional hours of work, per her request. Ms. Rodriguez maintained this was harassment because the employer knew she was not able to work weekends due to lack of child care.

Although the claimant may perceive the offering of additional weekend hours to be harassment, the administrative law judge cannot agree. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Florida App. 1973).

Without any more testimony from the claimant of other examples of harassment or unfair treatment, the administrative law judge concludes she quit without good cause attributable to the employer and is disqualified.

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 claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of June 14, 2012, reference 02, is reversed. Deysi Rodriguez is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/css