



not forthcoming. She attended all of her shifts until the one scheduled for Saturday, November 6 when she called in to say she was sick with the flu.

4. On Sunday, November 7, 2004 the petitioner's friend was unable to drive her to work. The petitioner called the kitchen manager and told him that she could not get to work that day because she had no ride. The manager was unhappy because Sunday is one of the diner's busiest days and told the petitioner, "It's my advice that you get here if you want to keep your job." The petitioner told him that she had no way to get in and did not come to work that day.

5. In response, the kitchen manager did not schedule the petitioner to work the next week. He "does not believe" ever telling the petitioner that she "was fired" and said that if she had contacted him he "quite possibly" would have rescheduled her, particularly because she was good about calling in when she could not come. However, the manager never conveyed to the petitioner that there was a possibility of being rescheduled if she contacted him. He recalled that there were three occasions when she did not come to work but he did not have any records with him of her attendance and could not recall the other dates when she was not at work.

It cannot be found based on this testimony that the petitioner missed more than two days of work.

6. The petitioner called in on the following Monday or Tuesday, to inquire about her schedule for the upcoming week. She was called by the head chef on Tuesday or Wednesday who told her that she had not been put on the schedule to work for the upcoming week. The petitioner interpreted this failure to put her on for any hours in conjunction with the manager's statement to her on Sunday to mean that she had been fired by the diner. She picked up her last check on November 11, 2004.

7. At the request of DCF, the petitioner obtained a statement from the employer about her separation from work. The form provided by DCF was captioned "Employment Termination." The kitchen manager wrote on the form following "reason for termination" that the petitioner "failed to report for work as scheduled on 3 occasions." There was no assertion on the form that the petitioner had quit.

8. Following receipt of this form, the DCF worker called to speak with the kitchen manager. Following her conversation with him, she believed that the petitioner had quit the job. The worker sent a notice to the petitioner

dated December 3, 2004 informing her that her Food Stamps would be suspended because she had quit her job and the duration of the suspension would be three months because this was the second sanction placed on the petitioner. The notice said that the petitioner would not receive Food Stamps during January, February and March of 2005.

9. The petitioner appealed that sanction. She agrees that she was sanctioned one time before in the past. However, she disagrees that this job separation was a quit on her part. She said that she enjoyed the job and would have continued working there if they had put her on the schedule. No one ever told her that there was a possibility that she could be placed back on the schedule. She is looking for other jobs in the restaurant business but is finding it difficult to obtain employment during the slow winter months.

10. Although no formal notification of firing was ever given to the petitioner, it is found that she reasonably believed based on the facts above (the statement of the kitchen manager and her failure to be scheduled for work) that she had been fired by her employer. Therefore, it cannot be concluded that the petitioner quit her job at the diner.

11. It is also found that the employer's written report to DCF that the petitioner had been terminated for failure to attend work is more accurate and consistent with the facts than subsequent statements made by the employer's agent attempting to recant this statement.

ORDER

The decision of DCF is reversed.

REASONS

The petitioner as an able-bodied person without dependents is subject to work requirements in the Food Stamp program. F.S.M. 273.7q. The regulations provide that a person who "voluntarily quits employment without good cause" is subject to sanctions. F.S.M. 273.7n(i)(iii). The second time that the individual is found ineligible for failure to follow work requirements, the sanction is three months of ineligibility. F.S.M. 273.7g(1)(c).

The facts above show that the petitioner had every reason to believe that she had been terminated by the employer and thus cannot fairly be labeled as having "quit" her job. In its written statement to DCF, the employer described himself as having terminated the petitioner for failure to show up for work. It is entirely unclear why DCF

felt it was necessary to contact the employer after receiving this unambiguous written statement to obtain a second oral statement. It was unfair for DCF to have relied upon the ambiguous and self-serving<sup>1</sup> oral statement obtained subsequently over the phone to sanction the petitioner.<sup>2</sup>

Furthermore, even if the petitioner had "quit" this job, she would have been justified as having "good cause" for doing so under DCF's regulations. The regulations specifically define "good cause" for leaving employment as "work demands or conditions that render continued employment unreasonable", F.S.M. 273.7n(3)(ii), and situations in which the employee is not paid at least a minimum wage, F.S.M. 273.7i(1)(i). The refusal of an employer to schedule an employee for work during the week and to pay any wages is a condition that makes continued employment not only unreasonable but unremunerative. Leaving employment under these conditions is not a "voluntary quit" under DCF's own definitions. As DCF has not followed its own regulations with regard to the facts in this matter, its decision is reversed.

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<sup>1</sup> Employers can be held liable for payment of unemployment compensation if workers are fired.

<sup>2</sup> Curiously, the regulations do not sanction employees who are fired for failure to show up for work. Therefore, whether this employer had a good reason to terminate this employee is not at issue here.

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