

**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**

**JENTRY JENSEN
416 NEW YORK AVE
CRESTON IA 50801**

**THE BOYLE COMPANY INC
CRESTHAVEN CARE CTR
600 STEVENS PORT DR APT 150
DAKOTA DUNES SD 57049-5313**

**Appeal Number: 05A-UI-08117-BT
OC: 07/10/05 R: 03
Claimant: Appellant (1)**

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 Leaving

STATEMENT OF THE CASE:

Jentry Jensen (claimant) appealed an unemployment insurance decision dated August 3, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with City Genre (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 24, 2005. The claimant participated in the hearing. The employer participated through Sandy Oswald, Director of Nursing.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time certified nurse's aide and certified medication aide from October 4, 2002 through July 10, 2005. The employer has an attendance policy under which an employee is discharged upon reaching 18 points. A no-call/no-show results in 18 points and immediate termination. The claimant received notification that she was at 12 points on May 5, 2005 and another notice that she was at 15 points on June 23, 2005. The claimant voluntarily quit her employment on July 10, 2005 when she was absent without notification. She did not go to work because she was ill and quit because she knew she would be fired.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant testified that she voluntarily quit her employment. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code Sections 96.5-1.

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.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant quit her employment because she knew she would be terminated anyway after she was a no-call/no-show on July 10, 2005. Although the claimant's separation was made as a result of the employer's attendance policy, the number of points she had accumulated as a result of that attendance policy was due to her own actions and not the employer's. Furthermore, even if the claimant believed she would have been discharged, that had not yet occurred. Consequently, the claimant's separation is not attributable to the employer and benefits are denied.

DECISION:

The unemployment insurance decision dated August 3, 2005, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

sdb/pjs