

**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**

**JOYCE A SIMONS
34282 JUPITER RD
GARBER IA 52048-8005**

**BRAINARDS COUNTRY CHANGE
18791 HWY 52 N
FARMERSBURG IA 52047**

**Appeal Number: 06A-UI-06582-S2T
OC: 05/21/06 R: 04
Claimant: Respondent (4)**

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 96.4-3 – Able and Available
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Brainard's Country Change (employer) appealed a representative's June 15, 2006 decision (reference 02) that concluded Joyce Simons (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 18, 2006. The claimant did not provide a telephone number where she could be reached and, therefore, did not participate. The employer participated by Amos Brainard, Owner and Brenda Wiskus, Laborer.

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 hired at the end of April 2005, as a part-time dishwasher. The employee/claimant regularly worked 25 hours per week. Toward the end of May 2005, the employer reduced the claimant's hours to ten per week. The claimant filed for unemployment insurance benefits with an effective date of May 21, 2006. The employer did not have a problem with the claimant collecting unemployment insurance benefits due to a reduction in her hours.

On June 22, 2006, the claimant told the employer she was quitting in order to work for another employer. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant is disqualified for being unavailable for work. For the following reasons the administrative law judge concludes she is not.

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was working part-time whenever work was available. The change in hours was initiated by the employer. The claimant is not disqualified from receiving unemployment insurance benefits because she was available for work.

The next issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did.

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant left her position with the employer to work for another employer. When an employee quits work to take other employment, she is not disqualified from receiving unemployment insurance benefits. The claimant quit work to take other employment. She voluntarily quit without good cause attributable to the employer. Benefits are allowed from June 22, 2006, because the claimant left to take other employment. The employer will not be charged for those benefits.

DECISION:

The representative's June 15, 2006 decision (reference 02) is modified in favor of the appellant. The claimant was able and available until June 22, 2006. She was qualified to receive unemployment insurance benefits. Then the claimant voluntarily left work without good cause attributable to the employer. The claimant is not disqualified from receiving unemployment insurance benefits because she quit to take other employment. The employer will not be charged for the benefits the claimant received as a result of the quit to take other employment.

bas/cs