

**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**

**Appeal Number: 050-UI-05840-MT  
OC: 12/05/04 R: 02  
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, 4<sup>th</sup> 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.

**DELMY BONILLA  
2411 - 24<sup>TH</sup> ST APT 5  
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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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 27, 2004, reference 01, which held claimant ineligible for unemployment insurance benefits. This matter was remanded by the Employment Appeal Board for a new hearing due to claimant's alleged inability to understand the English language. After due notice, a telephone conference hearing was scheduled for and held on June 28, 2005. Employer participated by Becky Knutson, Attorney at Law with witness Cara Lenz, Human Resource Manager. Claimant failed to respond to the hearing notice and did not participate. Exhibit One was admitted into evidence.

Claimant called after the hearing was over to request participation. Claimant initially asserted that she did not receive the hearing notice. After some questioning, the hearing notice was

found in claimant's possession. Claimant had shown the hearing notice to her social worker who allegedly told claimant that she would be called at home. Claimant failed to call the Appeals Bureau to provide a telephone number for the appeal hearing. Claimant's interpreter understood that something was wrong and started to look for a number at about five minutes after the hearing was to start. The interpreter called in at about 15 minutes after the hour and reached the administrative law judge at 19 minutes after the hour. By the time claimant called the hearing was long over.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 7, 2004. Claimant had been off work since November 12, 2004 with no call absences on multiple occasions. Claimant did not contact work again until December 6, 2004 when she was told that she was going to be terminated from employment because of the extended period off without notice or permission. Claimant asked for another chance. She was told to report in December 8, 2004. Claimant did not come back to work December 8, 2004 and her employment was then terminated. Claimant has a fair ability to communicate in the English language. Claimant based on participation in the appeal process before the employment appeal board knew or had reason to know of the need to provide a telephone number for the appeal hearing.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether claimant quit for good cause attributable to employer. The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of job abandonment. Claimant treated her job much like she treated her appeals with total and complete irresponsibility. Claimant's failure to call in or come to work for almost a month is conclusive evidence of job abandonment. There is no language barrier to excuse the failure to report to work for such a long time. Then, when given the chance to get her job back, claimant again abused the opportunity and failed to show for work. This is job abandonment, without question. Such is a separation without cause attributable to employer. Benefits withheld.

Claimant's failure to participate in the appeal hearings was due to her irresponsibility and not due to a lack of ability to communicate in English. Claimant with a fair ability to communicate in English, had the benefit of an interpreter and social worker yet still failed to follow procedure by calling in her telephone number.

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.

871 IAC 26.14(7) provides:

- (7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

- a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.
- b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.
- c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

**DECISION:**

The decision of the representative dated December 27, 2004, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Claimant's request to reopen the record is denied.

mdm\sc