

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

RACHELLE R HAYES
3219 KEOTA ST
DAVENPORT IA 52802

RIVERSIDE STAFFING SERVICES INC
c/o TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-08003-HT
OC: 07/03/05 R: 04
Claimant: Respondent (2)

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) – Quit

STATEMENT OF THE CASE:

The employer, Riverside Staffing Services, Inc. (Riverside), filed an appeal from a decision dated July 21, 2005, reference 01. The decision allowed benefits to the claimant, Rachelle Hayes. After due notice was issued a hearing was held by telephone conference call on August 22, 2005. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Senior Staffing Consultant Karrie Minch.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Rachelle Hayes began working for Riverside on September 23, 2004. Her last assignment began December 6, 2004 and ended June 27, 2005, at the client company, Regalia.

On June 22, 2005, her supervisor at Regalia verbally counseled her regarding her absenteeism. On June 24, 2005, she was no-call/no-show to work. A representative from Riverside called and left a message for her to contact the employer, but the claimant called Regalia instead and said she was having "personal problems" and would be in on Monday, June 27, 2005. However, on that day the client company requested Ms. Hayes to be removed from the assignment and Riverside notified her of this by phone.

The employer requires employees to call in once a week to notify Riverside of their availability. Ms. Hayes called in on July 5, 15, and 20, 2005. On August 8, 2005, the employer learned from the news media the claimant was incarcerated and removed her from their list of available employees.

Ms. Johnson received unemployment benefits since filing her claim with an effective date of July 3, 2005. Her last weekly claim was for the week ending August 6, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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 24.25(16) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (16) The claimant is deemed to have left if such claimant becomes incarcerated.

The claimant was removed from her last assignment because of attendance problems. Although she was verbally counseled a day or so before her removal, there is nothing in the record to establish whether this was the only warning or not, and if she was told her job was in jeopardy if she missed any more time.

However, Riverside still considered her to be an employee because she fulfilled her obligation to call in within a week after the end of her last assignment. She was only removed from the list of available employees when the employer learned she was incarcerated. Under the provisions of the above Administrative Code section, being incarcerated is considered a voluntary quit without good cause attributable to the employer. The claimant is disqualified as of the week ending August 13, 2005.

DECISION:

The representative's decision of July 21, 2005, reference 01, is reversed. Rachelle Hayes is disqualified effective with the week ending August 13, 2005, and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/tjc