

**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**

**SUSAN MEYERS
320 WILLISTON
WATERLOO IA 50702**

**BERTCH CABINET MFG INC
PO BOX 2280
WATERLOO IA 50704-2280**

**Appeal Number: 05A-UI-06293-BT
OC: 01/02/05 R: 03
Claimant: Appellant (5)**

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 Quit

STATEMENT OF THE CASE:

Susan Meyers (claimant) appealed an unemployment insurance decision dated June 6, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Bertch Cabinet Manufacturing (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 5, 2005. The claimant participated in the hearing. The employer participated through Mitzi Tann, Human Resources Director, and Mark Thome, Production Manager. Employer's Exhibits One and Two were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time cabinet parts sanding apprentice from August 9, 1998 through May 16, 2005. She had been placed on a final written warning for attendance on February 21, 2005. The claimant did not report to work at 6:00 a.m. as usual on May 11, 2005, so her department leader tried to reach her by phone. Eventually a man answered the claimant's phone and reported that he was a plumber and did not know where the claimant was located. Around noon, the claimant called the department leader and left a phone message that she had overslept. Her supervisor returned the call and arranged to meet her at 2:00 p.m. that day. No decision had yet been made as to whether she would be discharged and her attendance problems were going to be addressed in the meeting. The claimant did not report for the meeting and was a no-call/no-show for the next three working days. The employer considered the claimant to have voluntarily quit her employment effective May 16, based on its attendance policy regarding no-call/no-shows. The claimant reported she never went to the meeting or back to work because she assumed she was going to be fired anyway.

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 is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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 claimant did express her intent not to return work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated her intent to quit and acted to carry it out by failing to meet with the employer on May 11 as scheduled. She further demonstrated her intent to quit by her no-call/no-shows for the next three consecutive workdays. The claimant reported that she did not return to work because she believed she would have been fired anyway. Where an individual mistakenly believes that she is discharged and discontinues coming to work (but was never told she was discharged), the separation is a voluntary quit without cause attributable to the employer. LaGrange v. Iowa Department of Job Service, (Unpublished Iowa Appeals 1984).

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 has not satisfied that burden. Benefits are denied.

DECISION:

The unemployment insurance decision dated June 6, 2005, reference 01, is modified with no effect. 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/kjw