

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

PEG A THOMPSON  
322 ELM ST  
JEWELL IA 50130

KUM & GO LC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-05083-DWT  
OC: 04/09/06 R: 01  
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.

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-d – Voluntary Quit

STATEMENT OF THE CASE:

Peg A. Thompson (claimant) appealed a representative's May 9, 2006 decision (reference 02) that concluded she was not qualified to receive benefits, and the account of Kum & Go (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 30, 2006. The claimant participated in the hearing. Joel Thompson, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

Is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on June 6, 2005. The claimant cleaned, cooked and stocked goods from trucks. The claimant worked primarily in the kitchen. The employer considered the claimant a valued employee.

The claimant's last day of work was August 25, 2005. The next day the claimant had surgery on her elbow. The claimant needed surgery as the result of an injury that did not occur when she worked for the employer. The claimant and employer planned for the claimant to come back to work after she recovered from her surgery.

After the claimant received her permanent work restriction on January 11, 2006, she met with the employer to discuss the permanent work restrictions and what work she could do for the employer. The claimant's restrictions prohibited the claimant from doing repetitive work that required twisting, turning, grasping or squeezing, she could not lift over 15 pounds to her waist and she could not use any vibrating tools. Based on the work restrictions, the claimant was unable to perform her previous job. The claimant tried to work as a cashier but was physically unable to perform this job.

The claimant established a claim for unemployment insurance benefits during the week of April 9, 2006. The claimant is working with vocational rehabilitation counselors to find another job. The claimant has experience working as a cook, custodian and bar manager. With the claimant's permanent work restrictions, the claimant is applying to work with handicapped individuals and as a flag person with road crews. The claimant is unable to work in jobs in which she has experience.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. When a claimant takes a medical leave of absence and offers to return to the individual's regular work after recovering from a medical condition, the claimant is not disqualified from receiving unemployment insurance benefits. Iowa Code § 96.5-1-d.

The facts indicate the employer knew and understood the claimant had to have surgery on her elbow on August 26, 2005. The employer wanted the claimant to return to work after she recovered from the surgery. On January 11, 2006, the claimant learned she had permanent restrictions, which prevented her from returning to work as a cook for the employer. The employer had no other work available for the claimant to do. While the claimant satisfied the first part of Iowa Code § 96.5-1-d by taking a medical leave of absence, she does not satisfy the rest of the statute because she was not able to return to her regular work with her

permanent work restrictions. For unemployment insurance purposes, the claimant quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. Therefore, the claimant is not qualified to receive benefits as of April 9, 2006.

DECISION:

The representative's May 9, 2006 decision (reference 02) is affirmed. For unemployment insurance purposes, the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of April 9, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/kkf