

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

LINDA K MORRIS
1615 RIPLEY ST
DAVENPORT IA 52803

KWIK SHOP INC
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 05A-UI-08416-HT
OC: 07/10/05 R: 04
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, 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 claimant, Linda Morris, filed an appeal from a decision dated August 3, 2005, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 31, 2005. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer, Kwik Shop, participated by Store Manager Kai Brown and was represented by Employers Unity in the person of Sandy Fitch.

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: Linda Morris was employed by Kwik Shop from September 26, 2004 until July 9, 2005. She was a full-time cashier working 11:00 p.m. until 7:00 a.m.

The morning of July 9, 2005, when she was getting off work, Ms. Morris told Store Manager Kai Brown she was very excited because she and her husband were going to be shopping "all day." They were going to look for a car and other things. That evening around 8:00 p.m. the claimant called and reported to Mr. Brown that she would not be in for her 11:00 p.m. shift because she was ill. He told her he doubted she was sick because she had just been shopping that entire day. The manager stated that even though she was tired, she would have to come in and would have to decide if her job was important to her. It was either "play or work."

Ms. Morris did not come in to work that evening but came in two days later to talk to Mr. Brown and assure him there were "no hard feelings." He asked her if she felt she had "made the right decision" and she assured him she had, that her husband had been wanting her to return to school.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or

incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

The employer has presented sufficient testimony to cast doubt on any assertion the claimant may have made regarding being ill on the night in question. Apparently she spent the entire day shopping as planned and did not get any rest before her night shift started. This is a personal choice and does not constitute an illness or an excused absence from work. She was given the option to work or not to "play or work" and she chose not to come to work. Under the provisions of the above Administrative Code section, this constitutes a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

DECISION:

The representative's decision of August 3, 2005, reference 01, is affirmed. Linda Morris is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/pjs