

**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: 04A-UI-01735-RT  
OC: 01-18-04 R: 04  
Claimant: Appellant (1-R)**

**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.**

**CARLA L PETERSEN  
238 – 16<sup>TH</sup> PL  
CLINTON IA 52732**

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.

**EMPLOYERS SERVICE BUREAU INC  
PO BOX 294  
CLINTON IA 52733-0294**

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 – Voluntarily Quitting

STATEMENT OF THE CASE:

The claimant, Carla L. Petersen, filed a timely appeal from an unemployment insurance decision dated February 12, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued a telephone hearing was held on March 9, 2004, with the claimant participating. John Rausenberger, Superintendent, participated in the hearing for the employer, Employer’s Service Bureau, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a part-time worker assigned to Nestle Purina from March 29, 2003 until she separated from her employment on January 21, 2004. The employer provides contract labor, and at all material times hereto the claimant was assigned to Nestle Purina. The claimant's last day of work for the employer was January 7, 2004. The claimant was scheduled for January 8, 2004 but did not show up for work and did not inform the employer of a reason. The claimant was also scheduled for work on January 12, 13, 14, and 15, 2004. The claimant called the employer on each of those days and informed the employer that she was not going to work but gave no reasons. The claimant now testifies that she was ill with pneumonia. The claimant was then scheduled to work on January 19, 20, and 21, 2004, but she was absent on all three of those days and did not inform the employer on any of those days. The claimant now says that she was still ill with pneumonia.

The employer has a policy that an employee who is going to be absent or tardy must call in two hours before the start of that employee's shift. The employer also follows the rule that three consecutive absences without notifying the employer is treated as a voluntary quit. Since the claimant was absent for three days without notifying the employer, on January 19, 20, and 21, 2004, the employer treated the claimant as a quit and when she returned to work on January 22, 2004, she was told that she was terminated.

The claimant was also absent on December 26, 2003 but she informed the employer of this absence. On December 27, and 28, 2003 the claimant was absent and did not inform the employer. The claimant was in Texas to see her daughter. The claimant was also absent on December 29 and 30, 2003 while she was in Texas, and she informed the employer on both of these occasions. The claimant then returned to Iowa on December 31, 2003 but was absent on January 2, 2004 because she had too many things to do. She informed the employer of this absence as well. In the last five weeks of the claimant's employment, she worked only four days.

The claimant never expressed any concerns to the employer about her working conditions nor did she ever indicate or announce an intention to quit if any of her concerns about her work were not addressed by the employer. If the claimant had shown up for work as appropriate on January 19, 2004, work would have remained and been available for her.

Although the claimant has received no unemployment insurance benefits since filing for such benefits effective January 18, 2004, records show the claimant is overpaid unemployment insurance benefits in the amount of \$752.00 from 2001.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 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.

871 IAC 24.25(4) provides:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

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, (7) 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).

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The first issue to be resolved is the character of the separation. The claimant maintains that she was discharged when she returned to work on January 22, 2004 and was told that she was terminated. The employer maintains that the claimant voluntarily quit when she was absent for three days in a row without notifying the employer. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant voluntarily left her employment. The employer's witness, John Rausenberger, Superintendent, credibly testified that the claimant was absent for three days in a row, January 19, 20, and 21, 2004 without notifying the employer. The claimant adamantly denied that she failed to call the employer, testifying instead that she called the employer each day and that she was absent because of illness. The claimant's testimony is not credible. The claimant testified that she was ill for a number of days in January with pneumonia. However, the claimant testified that she only went to see the doctor once during this period of time and did not provide the employer a doctor's excuse. The administrative law judge believes that anyone who was ill with pneumonia and had been absent at least seven days and had worked no days in the two weeks, would have seen a doctor more than once and would have offered an employer a doctor's excuse. The claimant did not. Also affecting the claimant's credibility is that she testified that on at least four other days, January 12, 13, 14, and 15, 2004, she was ill and called the employer every day. The employer agreed the claimant had called in those absences. The claimant testified that on the three days in question she called and spoke to different people or the answering service, but on the other days the claimant said she always called the answering service. Also reducing the claimant's credibility was her testimony that on

January 8, 2004 she was not really absent, as she went to work and got her check but was told that there was no work. The employer's witness, John Rausenberger, Superintendent, credibly testified that the claimant would not have been entitled to a check at that time because she had not worked the previous week. Also affecting the claimant's credibility was her testimony that she was in Texas with the permission of the employer for a number of days in December but nevertheless, called the employer at least on four of those days. The claimant had no reasonable explanation as to why she called in every day when she was in Texas if she had had permission in advance from the employer to go to Texas. Also the claimant testified that she returned from Texas on December 31, 2003 but did not return to work on January 2, 2004 because she "had things to do." The claimant's attitude towards her job seems quite cavalier. The claimant's testimony is not credible and therefore, the administrative law judge is constrained to conclude that the claimant did not inform the employer of her absences on January 19, 20, and 21, 2004 and therefore, she voluntarily quit. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant really gave no reasons for her leaving her employment. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. Rather, it appears to the administrative law judge that the claimant worked whenever she wanted to and refused to work when she did not want to; and that this was the reason for her quit, but this is not good cause attributable to the employer. Being absent for three days in a row without giving notice to the employer is also not good cause attributable to the employer. Finally, there is no evidence that the claimant ever expressed any concerns to the employer about her working conditions or that she ever indicated or announced an intention to quit if any of her concerns were not addressed by the employer. Therefore, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and, as a consequence, her separation would be potentially disqualifying.

However, both witnesses testified that the claimant's employment was part-time. An individual who voluntarily quits part-time employment without good cause attributable to the employer, and yet is otherwise monetarily eligible for unemployment insurance benefits based on wages paid by other based period employers shall not be disqualified for voluntarily quitting the part time employment. This matter should be remanded to Claims for an investigation and determination as to whether the claimant is otherwise monetarily eligible to receive unemployment insurance benefits and, if so, the amount of those benefits to which the claimant is entitled. Benefit payments shall not be made to the claimant based on wages paid by the part-time employer herein, Employer's Service Bureau, Inc., nor shall the part-time employer be charged for any unemployment insurance benefits to which the claimant is entitled.

Even if the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for excessive unexcused absenteeism, which is disqualifying misconduct. The claimant had numerous absences, which were not properly reported to the employer, as noted above, and some were not for reasonable cause or personal illness. Even the claimant concedes that she was absent on January 2, 2004 because she "had things to do." The claimant conceded also that she did not properly report absences on December 27 and 28, 2003, and the administrative law judge concludes above that the claimant

also failed to report other absences. Even the claimant concedes that she only worked four days in the last five weeks of her employment. Accordingly, even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism and would still be disqualified to receive unemployment insurance benefits. The administrative law judge notes that under a discharge, the claimant would not be entitled to benefits even though the employment herein was part-time.

**DECISION:**

The representative's decision of February 12, 2004, reference 01, is affirmed. The claimant, Carla L. Petersen, left her employment voluntarily without good cause attributable to the employer and the separation is potentially disqualifying. However, because the employment was part-time, this matter must be remanded to Claims for an investigation and determination as to whether the claimant is otherwise monetarily eligible to receive unemployment insurance benefits based on wages paid by other base period employers and, if so, the amount of benefits to which the claimant is entitled. Any benefits to which the claimant is entitled shall not be based on wages paid by the part-time employer herein, Employer's Service Bureau, Inc., nor shall the account of the part-time employer be charged for any such benefits paid to the claimant.

**REMAND:**

This matter is remanded to claims for an investigation and determination as to whether the claimant is otherwise monetarily eligible to receive unemployment insurance benefits based on wages paid by other based period employers because the employment here for which the claimant quit without good cause attributable to the employer was only part time. Benefit payments shall not be made based on wages paid by the part-time employer, Employer's Service Bureau, Inc., nor shall that employer's account be charged for any unemployment insurance benefits to which the claimant is entitled. If the claimant is monetarily eligible to receive unemployment insurance benefits, a computation and determination must be made by Claims as to the amount of the benefits to which the claimant is entitled.

dj/b