

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

DEANNA K CHEERS  
305 N ELM  
CRESTON IA 50801

PAPETTI'S OF IOWA  
c/o ADP UNEMPLOYMENT  
GROUP-JAMES FRICK INC  
PO BOX 66744  
ST LOUIS MO 63166-6744

Appeal Number: 04A-UI-02259-RT  
OC: 01/25/04 R: 03  
Claimant: Appellant (4)

**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 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Deanna K. Cheers, filed a timely appeal from an unemployment insurance decision dated February 26, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on March 18, 2004, with the claimant participating. Beverly Lawrence, Human Resources Representative, participated in the hearing for the employer, Papetti's of Iowa. Isaias Arevalo, Supervisor, was available to testify for the employer, but not called because his testimony would have been repetitive and unnecessary. The administrative law judge takes official notice of Iowa Workforce Development 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 full-time laborer in the pre-cook section from August 1, 2002 until she voluntarily quit on December 20, 2003. The claimant quit because she had taken a different job with Creative Innovations. The claimant had this job in hand at the time of her quit from the employer and that was the only reason for her quit. The claimant began work for Creative Innovations on January 5, 2004, but was laid off for a lack of work on January 26, 2004. Workforce Development Records do not show any earnings for the claimant from Creative Innovations, but she only worked for it in the first quarter of 2004 and those earnings records have not yet been reported to Iowa Workforce Development. The claimant did not file for unemployment insurance benefits until an effective date of January 25, 2004, a month after leaving the employer herein. When the claimant filed for such benefits she indicated that her last employer was Creative Innovations.

#### 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 not.

Iowa Code Section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The parties concede that the claimant left her employment voluntarily. 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 the employer herein 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 credibly testified that she left her employment with the employer herein to take another job with Creative Innovations, which she had in hand at the time of her quit and for whom she performed services from January 5, 2004 until January 26, 2004. Leaving work for this reason is not good cause attributable to the employer. However, the administrative law judge concludes that the claimant left her employment in good faith for the sole purpose of accepting other employment which she did accept and for which she performed services. Therefore, the claimant is not disqualified to receive unemployment insurance benefits. However, any benefits to which the claimant is entitled relating to wage credits earned with the employer herein,

Papetti's of Iowa, shall not be charged to the account of that employer, but rather shall be charged to the Unemployment Compensation Fund. Unemployment insurance benefits are allowed to the claimant provided she is otherwise eligible. Any unemployment insurance benefits to which the claimant is entitled relating to wage credits earned with the employer herein shall be charged to the Unemployment Compensation Fund and not to the account of the employer herein.

DECISION:

The representative's decision dated February 26, 2004, reference 01, is modified. The claimant, Deanna K. Cheers, is entitled to receive unemployment insurance benefits provided she is otherwise eligible. Any unemployment insurance benefits to which the claimant is entitled relating to wage credits earned with the employer herein, Papetti's of Iowa, shall be charged to the Unemployment Compensation Fund and not charged to the account of the employer because the claimant left her employment voluntarily in good faith for the sole purpose of accepting other employment for which she did accept and for which she performed services.

kjf/b