

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

MELANIE A KNUTH
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Appeal Number: 05A-UI-01016-RT
OC: 01-02-05 R: 03
Claimant: Appellant (2)

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 Quitting

STATEMENT OF THE CASE:

The claimant, Melanie A. Knuth, filed a timely appeal from an unemployment insurance decision dated January 25, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on February 15, 2005, with the claimant participating. The claimant was represented by Elizabeth Norris, Attorney at Law. David Williamson, Area Supervisor, participated in the hearing for the employer, Casey's Marketing Company, doing business as Casey's General Store. 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 pizza cook from June 29, 2004 until she voluntarily quit on October 7, 2004. The claimant averaged between 20 and 30 hours per week. The claimant quit because co-workers were stealing from the employer by baking more pizzas than they reported and then selling the extra pizzas to customers but pocketing the money. The claimant was quite concerned about this behavior. The claimant consulted the manager, Susie, on August 4, 2004 and informed her about what was going on. She said that it was all in the claimant's head and that if she called headquarters, no one would believe her. The situation persisted and the claimant tried to quit on September 25, 2004 when she spoke to Susie and the assistant manager, Sara at Sara's house. She again explained what was going on and that she did not want to work there. They told the claimant that things would get better and the claimant returned to work. Things did not get better and the claimant again attempted to quit on October 2, 2004. She called Sara and told her that she was quitting for the reasons she had previously discussed with her and Susie. Both Sara and Susie called the claimant back and again talked her out of quitting and said that they would work on the problem. However, the problem persisted and on October 7, 2004, the claimant quit when she told Andrew, the cashier, that she was quitting and then left work and never returned to work thereafter. There are no other reasons for the claimant's quit. The claimant did not contact the employer's headquarters because she had been told by Susie and Sara that she would not be believed. As a part-time pizza cook, the claimant reported to the assistant manager or the manager. The employer became aware of this situation on or about November 18, 2004 by reviewing records and security tapes and discovered the conduct to which the claimant had complained.

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 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 24.26(2), (3), (4) provide:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (2) The claimant left due to unsafe working conditions.
- (3) The claimant left due to unlawful working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.

The parties conceded, and the administrative law judge concludes, the claimant left her employment voluntarily on October 7, 2004. 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 met 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 beginning several weeks after her employment, employees would make more pizzas than they reported and take the extra pizzas and sell them to customers and pocket the money, which was stealing from the employer. The claimant was most concerned about this situation. The claimant reported the situation to the manager on August 4, 2004 and the manager told her that it was all in her head. The situation persisted and the claimant attempted to quit twice on September 25, 2004 and again on October 2, 2004 but on each occasion was talked out of quitting by the manager and assistant manager and informed that things would get better. They never got better and the claimant quit. The employer's witness, David Williamson, Area Supervisor, credibly testified that the employer became aware of this situation on November 18, 2004 after a review of records and security tapes. He did not doubt the claimant's testimony concerning the theft from the employer. Accordingly, the administrative law judge concludes that the theft that was going on in the presence of the claimant made her working conditions intolerable and detrimental and perhaps unsafe and certainly unlawful. Further, the claimant expressed her concerns to her supervisors on several occasions including actually attempting to quit on two occasions because of these matters. The claimant gave the employer an opportunity to address her concerns. It is true that the claimant did not inform the employer's headquarters but she credibly testified that she did not do so because she had been told by both the manager and assistant manager that she would not be believed. The claimant reported to the manager and the assistant manager. The administrative law judge believes that this was sufficient under the circumstances here. Accordingly, the administrative law judge concludes that the claimant's working conditions were intolerable and detrimental and perhaps unsafe and definitely unlawful and she had apprised the employer sufficiently of these matters and, therefore, the claimant voluntarily quit with good cause attributable to the employer. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

DECISION:

The representative's decision of January 25, 2005, reference 01, is reversed. The claimant, Melanie A. Knuth, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible because she left her employment voluntarily with good cause attributable to the employer.

pjs/tjc