

**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**

**JESSICA D MCBRIDE
1525 FILMORE
DAVENPORT IA 52803**

**APAC CUSTOMER SERVICES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-05151-RT
OC: 10/24/04 R: 04
Claimant: Respondent (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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, APAC Customer Services, Inc., filed a timely appeal from an unemployment insurance decision dated May 2, 2005, reference 07, allowing unemployment insurance benefits to the claimant, Jessica D. McBride. After due notice was issued, a telephone hearing was held on June 2, 2005, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she, or any of her witnesses, could be reached for the hearing, as instructed in the notice of appeal. Turkessa Hill, Human Resources Coordinator, participated in the hearing for the employer. The administrative law

judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

At 10:00 a.m., the administrative law judge tried to call Ms. Hill at the number she had provided. He reached her voice mail, which indicated that she would not be in until 12:00 noon. She provided two other numbers; one of which the administrative law judge called and received a voice mail for Wendy. That voice mail instructed the caller to dial 0, which the administrative law judge did. He reached someone else, who informed him that Wendy was not in, but that he would be transferred to the person at the other number provided by Ms. Hill, Bonny O'Brien. The administrative law judge was placed on hold for some time, and was eventually informed that Ms. O'Brien would not be doing the hearing, and that Ms. Hill had requested that the hearing be postponed until 11:30 a.m., because she was at home ill. The administrative law judge explained that he could not postpone a hearing after the time for the hearing, and further, it would be unfair to the claimant, who had not called in a telephone number, to reschedule the hearing for a particular time later in the day. The administrative law judge was placed on hold for a couple more minutes, and then told that Ms. Hill would take the hearing at her home, and her home number was provided. The administrative law judge called that number at 10:11 a.m., and Ms. Hill participated in the hearing.

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: The claimant was employed by the employer as a part-time customer service representative from March 7, 2005, until she voluntarily quit on April 8, 2005. The claimant was part-time, averaging 30 hours per week, and her training had not been completed at the time she quit. On April 8, 2005, the claimant came in and filled out a resignation form for the employer, stating that she was quitting because she was moving out of state. The claimant also prepared an exit interview, also stating that she was moving out of state. At fact finding, the claimant said something about not returning to work because she had too many points for absenteeism and she didn't have daycare for her child for a week, and because of the points, she did not feel that she would be able to go back to work, and, apparently, did not. Pursuant to her claim for unemployment insurance benefits filed effective October 24, 2004, and re-opened effective March 6, 2005, and April 10, 2005, the claimant has received unemployment insurance benefits in the amount of \$1,056.00 since separating from the employer herein on or about April 8, 2005, and re-opening her claim for benefits effective April 10, 2005, as follows: \$176.00 per week for six weeks from benefit week ending April 16, 2005, to benefit week ending May 21, 2005. These benefits, along with benefits received prior to the employment herein, exhausted the claimant's unemployment insurance benefits for the benefit year, except for \$21.50.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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(2)(17)(33) 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:

(2) The claimant moved to a different locality.

(17) The claimant left because of lack of child care.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The employer's witness, Turkessa Hill, Human Resources Coordinator, credibly testified, and the administrative law judge concludes, that the claimant voluntarily left her employment on April 8, 2005. Ms. Hill credibly testified that the claimant filled out a resignation form indicating that she was moving out of state, and also an exit interview indicating the same reason for her separation. At fact finding, the claimant stated that she did not quit, but then goes on to state that she had amassed some absenteeism points, and that she did not have daycare for a week, and, apparently, did not return to work because she did not feel that she would have been able to go back. This also appears to be a quit. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily on April 8, 2005. 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 did not participate in the hearing and provide reasons attributable to the employer for her quit. Ms. Hill credibly testified that the claimant stated in both a written resignation and an exit interview, that she was quitting to move out of state. Leaving work voluntarily to move to a different locality is not good cause attributable to the employer. At fact finding, the claimant made reference to daycare, but leaving work voluntarily because of lack of daycare is also not good cause attributable to the employer. The claimant seemed to state at fact finding that, perhaps she had amassed points and would not have been able to come back to work, but Ms. Hill credibly testified that, if the reason for the claimant's problems were daycare, that the

employer would have taken that into consideration and tried to accommodate the claimant's difficulties, but that the claimant never gave the employer an opportunity to do so. This is like a situation in which a claimant leaves work because the claimant feels that her job performance is not to the satisfaction of the employer, but the employer has not requested the claimant to leave, and continued work was available. This is not good cause attributable to the employer. Finally, the administrative law judge concludes that the claimant never gave the employer a reasonable opportunity to address any of her problems or concerns. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily on April 8, 2005, without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,056.00 since separating from the employer herein on or about April 8, 2005, and re-opening her claim for unemployment insurance benefits effective April 10, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 2, 2005, reference 07, is reversed. The claimant, Jessica D. McBride, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer. She has been overpaid unemployment insurance benefits in the amount of \$1,056.00.

kjw/pjs