

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

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Appeal Number: 05A-UI-05768-SWT
OC: 04/24/05 R: 01
Claimant: Respondent (5)

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 Quit
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 17, 2005, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on June 17, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Arnold Haynes participated in the hearing on behalf of the employer. The parties agreed that the issue of whether the claimant should be denied benefits due to her self-employment activities could be considered, and they waived advance notice of that issue.

FINDINGS OF FACT:

The claimant worked for the employer as a computer technician from June 17, 1996, to April 26, 2005. On March 23, 2005, the claimant submitted her resignation to the employer to

be effective August 1, 2005. The claimant resigned to accept employment with the Treynor School District.

Under the claimant's employment agreement, she was to be paid twice per month. The payday for the period from March 16 through March 31 was April 8, 2005. The employer informed the claimant that that her payday would be delayed until April 11. The employer, however, did not pay the claimant on April 11. When she had not received paid by April 19, the claimant submitted a letter notifying the employer that she would be quitting employment on April 30, 2005, if she did not receive her pay. The payday for the pay period from April 1 through April 15 was April 25. The claimant was not paid and was informed that the paycheck would be delayed as well. On April 27, 2005, the claimant submitted a letter to the employer indicating that she was quitting employment immediately because of the employer's failure to pay wages when due.

Starting May 2, 2005, the claimant began performing work as an independent contractor for the Treynor School District on a short-term contract basis doing computer work. She worked approximately 24 hours per week up until May 26, 2005. During this time, the claimant remained available for other work and actively sought employment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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(4) provides:

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:

(4) The claimant left due to intolerable or detrimental working conditions.

An employee has the right to expect that the employer will pay wages when the wages are due. The employer's failure to meet its payroll obligations created detrimental working conditions that justified the claimant's leaving work before the effective date of her resignation. This was the immediate cause of the claimant's separation from work. She satisfied the legal requirement of notifying the employer about the detrimental working conditions and providing the employer the opportunity to correct the situation.

The employer suggests that the claimant was about to be terminated, but that decision was never communicated to the claimant and, therefore, is irrelevant to the claimant's qualification for unemployment insurance benefits.

The final issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The rules provide that the claimant is considered unavailable for work if she devotes time and effort becoming self-employed. 871 IAC 24.23(7). What the rule means is that if the self-employment activities are to the extent that the claimant is no longer attached to the labor market, the claimant is considered unavailable for work. 871 IAC 24.22(2). In this case, the claimant was self-employed part-time on a short-term contract and remained otherwise able and available for work. She is qualified for unemployment insurance benefits, provided she is otherwise eligible.

DECISION:

The unemployment insurance decision dated May 17, 2005, reference 01, is modified with no change in the outcome of the case. The claimant voluntarily quit employment with good cause attributable to the employer. The claimant is not subject to disqualification for being unavailable for work due to her self-employment activity. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjw