

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

KRISTIN W PORTER
302 W 2ND ST N
ESTHERVILLE IA 51334

PAUL D WOFFORD
MCDONALDS RESTAURANT
PO BOX 105
OKOBOJI IA 51355

Appeal Number: 04A-UI-11739-HT
OC: 10/03/04 R: 01
Claimant: Appellant (1)

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 - Quit

STATEMENT OF THE CASE:

The claimant, Kristin Porter, filed an appeal from a decision dated October 20, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on November 24, 2004. The claimant participated on her own behalf and with a witness Allen Porter. The employer, McDonald's, participated by Trainer Diane Gayer and Store Manager Matt Kragel.

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: Kristin Porter was employed by McDonald's from

May until September 19, 2004. She was a full-time shift leader. The claimant had transferred from the store in Estherville, Iowa, and indicated she wanted to stay at the Okoboji store because the money was better.

In September 2004, the claimant asked Trainer Diane Gayer if she could transfer back to the Estherville store. The employer agreed but said it would be a few weeks while she found and trained a replacement. Immediately thereafter, the claimant's father, Allen Porter, became involved and negotiated a faster transfer. That was the first time anyone had mentioned that Ms. Porter did not want to work with a male co-worker, Eric. It was agreed that she would not have to, and would be able to start working in the Estherville store after she finished her shift in Okoboji on Sunday, September 19, 2004. She had originally wanted that day off but agreed to work in return for her other demands being met.

On September 19, 2004, the claimant was scheduled to work 5:30 a.m. until 2:00 p.m. Around 7:00 a.m. she approached the managers, Desiree Juarez and Matt Kragel, and said she wanted to leave at 11:00 a.m. for a church function. She was told she could not leave because the store was short-handed. Ms. Flores told her she would be fired if she left, but the claimant kept telling the managers she was leaving to meet her father.

The claimant left without permission around 11:00 a.m. as she had indicated and Ms. Gayer was notified of what had happened. When she called Ms. Porter that afternoon to ask what was going on, the claimant maintained she had been stung by a bee the day before and had been running a high fever. When confronted with the report by the managers on duty, she had no response.

Ms. Porter maintained at the hearing that she left because Eric had been called in as a substitute and it had been agreed she would not have to work with him. However, Eric had been notified by make himself available in case the claimant left at 11:00 a.m. as she had said she was going to do. He was not in the store at the time she left.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes 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.

The claimant quit because she refused to continue working. The manager's response that if she left she would be discharged was notification that the decision whether to remain employed by McDonald's was entirely the responsibility of the claimant. The parties agreed that Ms. Porter would not have to work with Eric before she transferred, and she did not. By the time she left the store, Eric was not present, and there was no breach of that agreement which caused her to quit. He had only been notified to make himself available as the manager was concerned Ms. Porter was going to leave without permission, which she did.

The claimant has changed her story too often to be credible. At first she requested to leave for a church function, then told Ms. Gayer she had a fever from a bee sting, and at the hearing she

said she left because Eric had been called in. It appears she felt her church function was more important than working her scheduled shift. This is not good cause attributable to the employer and she is disqualified.

DECISION:

The representative's decision of October 20, 2004, reference 01, is affirmed. Kristin Porter is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/tjc