

**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**

**KAY D HABERMAN
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**IOWA CATHOLIC CONFERENCE
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**Appeal Number: 05A-UI-11032-JTT
OC: 10/2/05 R: 02
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) – Voluntary Quit

STATEMENT OF THE CASE:

Claimant Kay Haberman filed a timely appeal from the October 20, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 16, 2005. Ms. Haberman participated personally and was represented by Attorney Larry Handley. Consultant Paul Jahnke represented the employer and presented evidence through St. Theresa Principal Ellen Stemler and Parish Manager Ron Schiller. Claimant's Exhibit A was received into evidence. This hearing was held in conjunction with the hearing in Appeal Number 05A-UI-11033-JTT.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kay Haberman was employed by the Iowa Catholic Conference as the full-time Kitchen Director at St. Theresa's Catholic School in Des Moines until September 23, 2005, when she quit the employment in response to being placed on paid administrative leave. Ms. Haberman had been in the employment for ten years. Ms. Haberman had received no reprimands in the course of her employment.

On the morning of Friday, September 23, Principal Ellen Stemler sent an e-mail message to Ms. Haberman, summoning Ms. Haberman to a meeting in the principal's office that afternoon. Ms. Haberman appeared for the meeting at the appointed time. Parish Manager Ron Schiller was also present for the meeting. At a board of education meeting earlier in the week, the board addressed allegations of misconduct involving the school's kitchen operations and staff. Upon the advice of legal counsel, the employer decided to place Ms. Haberman on paid administrative leave while a team comprised of Principal Stemler, the school pastor and two board members investigated the allegations. The purpose of the meeting on the afternoon of September 23 was to inform Ms. Stemler that she was being placed on paid administrative leave. During the investigation, Ms. Haberman would only be allowed on school property for the purpose of meeting with the investigating team. Upon the advice of counsel, the employer did not provide Ms. Haberman with any forewarning of the purpose of the meeting. Upon the advice of counsel, Ms. Stemler did not tell Ms. Haberman what the allegations were.

The meeting in the principal's office lasted three to five minutes. Ms. Stemler advised Ms. Haberman that there were "serious allegations" regarding the kitchen operations and staff and that Ms. Haberman was being placed on paid administrative leave while the allegations were investigated. Ms. Stemler did not advise Ms. Haberman that her job was in jeopardy or that Ms. Haberman would be disciplined if the investigation revealed misconduct on the part of the kitchen staff. Ms. Haberman requested and then demanded to know the allegations against her. Ms. Haberman was upset with being placed on a leave of absence and even more upset with not being informed of the allegations that were being investigated. Ms. Haberman indicated she was not going to leave until she learned the allegations. When Ms. Stemler maintained the refusal to discuss the allegations, Ms. Haberman became angry. Ms. Haberman said, "I've had it, I'm done." Ms. Stemler told Ms. Haberman that she did not need to quit. Ms. Haberman exited the principal's office and continued to be upset in the hallway. Principal Stemler and Parish Manager Ron Schiller followed. There were students present in the hallway. Ms. Haberman threw a basket of lunch tickets and change on a counter and stated, "I don't need this." Ms. Haberman made her way to the kitchen, where her son was waiting. Ms. Haberman threw some things on the floor in the kitchen. Ms. Haberman collected her belongings from her desk and made a series of telephone calls. At least one call was to a member of the kitchen staff. Up to this point, Ms. Stemler had advised Ms. Haberman several times that she did not need "to do this," that she did not need to quit. Ms. Haberman stated, "I'm done, I'm not going to take this anymore." When Ms. Stemler concluded that Ms. Haberman did, in fact, intend to quit the employment, Ms. Stemler requested Ms. Haberman's keys to the facility. Ms. Haberman then proceeded outside to load her effects in her car. Ms. Haberman continued to be visibly upset. Another kitchen staff member was present and was also visibly upset. A group of second grade children were participating in an outdoor physical education class nearby. Principal Stemler advised Ms. Haberman that Ms. Haberman needed to leave.

The contact between Principal Stemler and Ms. Haberman lasted approximately 20 minutes, from the start of the meeting in the principal's office until Ms. Haberman left the grounds.

On the following Monday, September 26, Ms. Haberman faxed a letter to the school, to the attention of Principal Stemler and Parish Manager Schiller. Mr. Schiller received the letter and shared it with Principal Stemler and the school pastor. In the first two paragraphs of the letter, Ms. Haberman states as follows:

This memo is to inform both Ellen Stemler and Ron Schiller, that I, Kay Haberman, have not quit or resigned my position as Food Service Director of the St. Theresa Parish Catholic School.

As to the meeting on Friday, I do not want anyone to misconstrue the conversation. I was heart broken and did not understand the grounds for my leave with pay, pending an investigation of the food service.

Aside from the faxed letter, Ms. Haberman had no additional direct contact with her supervisor, Principal Stemler. Ms. Haberman learned through a contact in the parish office that her letter had been received.

At the time the employer placed Ms. Haberman on paid administrative leave, the employer intended to continue Ms. Haberman's employment. After Ms. Haberman announced her resignation on September 23, the employer elected to accept the resignation.

REASONING AND CONCLUSIONS OF LAW:

The first issue the administrative law judge must address is whether the evidence in the record establishes that Ms. Haberman quit the employment. It does. The second issue the administrative law just must address is whether the evidence in the record establishes that the quit was for good cause attributed to the employer. It does not.

In general a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence in the record establishes that Ms. Haberman did, in fact, quit the employment. Ms. Haberman announced her intention to immediately quit the employment in at least three separate utterances during a 20-minute period. Ms. Haberman further evidenced her intention to quit the employment by (1) angrily leaving the meeting with Principal Stemler and Parish Manager Schiller, (2) storming through the hallway of the school toward her work area, (3) throwing the lunch tickets and change on the counter in the hallway, (4) collecting her personal property from her desk, and (5) loading her personal property in her car. Most of these actions were simultaneous to the utterances announcing the quit. The letter Ms. Haberman faxed three days later did not undo the quit. The reinterpretation of events set forth in the first two paragraphs amounts to an acknowledgement by Ms. Haberman that a reasonable employer would have concluded she had quit the employment on September 23.

The remaining question is whether the quit was for good cause attributable to the employer. Ms. Haberman quit the employment in response to a perceived reprimand. A quit in response to a reprimand is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(28). In addition, Ms. Haberman gave the employer notice of her intention to resign and the employer accepted the resignation. Quits under such circumstances are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(37). Ms. Haberman did not present sufficient evidence to overcome either presumption.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Haberman voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Haberman is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

DECISION:

The Agency representative's October 20, 2005, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

JT/s