

**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**

**ZAINAB J FOUAIL  
3201 – 30<sup>TH</sup> ST BLDG #1  
DES MOINES IA 50310**

**FOODS INC  
4343 MERLE HAY RD  
DES MOINES IA 50310**

**JENNIFER SMYSER  
COUNCIL FOR INTERNATIONAL  
UNDERSTANDING  
1000 WALNUT STE 1105  
DES MOINES IA 50309**

**Appeal Number: 05A-UI-07395-S2  
OC: 06/05/05 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct  
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Zainab Foueil (claimant) appealed a representative's July 14, 2005 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Foods (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Des Moines, Iowa, on August 9, 2005. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 9, 2005. The claimant participated personally through Lakhdar Rebahi, Interpreter. The employer participated by Jeff Hudson, Store Manager.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in November 2003, as a full-time produce worker. The claimant noticed a pain in her leg at the end of March 2005, but did not properly report the injury to the employer. She sought medical attention and her physician restricted her from working. The claimant did not report the restriction to the employer because she wanted to keep working to support her family.

In April 2005, the claimant requested time off to visit her son in Iraq who was ill. The employer allowed a four to six week leave promising the claimant a part-time position when she returned between May 6 and 20, 2005. The claimant returned home on May 26, 2005, and spoke to her produce manager. He explained that part-time work was available. The claimant went to other locations to seek work but never came to her store location to start work or seek hours. The employer assumed the claimant had quit work. Continued work was available to the claimant had she reported to work.

On July 20, 2005, the claimant's physician released her to return to work with restrictions.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her actions. She did not return to work after her scheduled leave. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she was not.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness she is considered to be unavailable for work. The claimant was restricted from working by her physician from March 31

to July 20, 2005. She is considered to be unavailable for work from March 31 to July 20, 2005. The claimant is disqualified from receiving unemployment insurance benefits from March 31 to July 20, 2005.

DECISION:

The representative's July 14, 2005 decision (reference 02) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. In addition, the claimant is disqualified from receiving unemployment insurance benefits from March 31 to July 20, 2005, due to her inability to work during that time.

bas/sc