

**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**

**Appeal Number: 05A-UI-08038-DT
OC: 07/03/05 R: 01
Claimant: Appellant (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.

**CATHERINE S KNOTEK
3548 – 10TH AVE
COUNCIL BLUFFS IA 51501**

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.

**BETHANY LUTHERAN HOME INC
ATTN CINDY SCHECHINGER
7 ELLIOTT ST
COUNCIL BLUFFS IA 51503**

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Catherine S. Knotek (claimant) appealed a representative's July 28, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 23, 2005. The claimant participated in the hearing. Jan Klingensmith appeared on the employer's behalf. One other witness, Mike Van Sickle, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 9, 2004. She worked full time (32 hours per week) as a registered nurse in the employer's long-term care nursing facility. Her last day of work was June 19, 2005.

On June 19, 2005, the charge nurse on duty contacted Ms. Klingensmith, the director of nursing, and reported that there were drugs missing from the facility's supplies. Under the employer's drug policy, Ms. Klingensmith then directed all of the nurses on duty at that time, including the claimant, to submit to urinalysis. At the end of the shift, the claimant put a note under Ms. Klingensmith's door indicating that she was a recovering addict but that she had had a relapse and that her test would come back positive. She stated, "I know you will not accept me as an employee now . . ." She apologized and indicated that she was not going to return to work.

The drug test did not come back until July 12, 2005, and so the employer would not have made a decision regarding the claimant until that time. Nothing had been said to the claimant by any of the employer's representatives to the effect that she had been discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for 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.

Where an individual believes that she or he is discharged and discontinues reporting to work, but was never told she or he was discharged, the separation is considered a voluntary quit without good cause attributable to the employer.

Inasmuch as the employer had not told the claimant she was fired, nor had there been any discussion with the claimant regarding a potential discharge, and the claimant left prior to determining the status of her employment relationship with the employer, she acted in a manner such that the employer would reasonably believe she had resigned her position. The employer was never brought to the point of deciding whether to discharge the claimant or not. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify the claimant. Iowa Code §96.6-2. While the claimant had a compelling personal reason for resigning, it is not good cause attributable to the employer. 871 IAC 24.25(20). The claimant has not satisfied that burden. Benefits are denied.

DECISION:

The representative's July 28, 2005 decision (reference 01) is modified with no effect on the parties. The claimant voluntarily left her employment without good cause attributable to the employer. As of June 19, 2005, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

ld/pjs