

**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**

**TAMMY M NOBLE
2724 E GRAND AVE
DES MOINES IA 50317-2325**

**APPLE CORPS LP
APPLEBEES NEIGHBORHOOD GRILL
1877 N ROCK RD
WICHITA KS 57206**

**Appeal Number: 06A-UI-05928-HT
OC: 05/14/06 R: 02
Claimant: Respondent (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 employer, Applebees, filed an appeal from a decision dated June 2, 2006, reference 01. The decision allowed benefits to the claimant, Tammy Noble. After due notice was issued, a hearing was held by telephone conference call on June 26, 2006. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by General Manager Mike Peterson.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Tammy Noble was employed by Applebees from March 13 until March 24, 2006. She was a part-time broiler cook.

On March 24, 2006, the claimant was no-call/no-show to work. The employer considered her a voluntary quit although there is no specific provision in the employee handbook which specifies one no-call/no-show to work will be considered a voluntary quit.

REASONING AND CONCLUSIONS OF LAW:

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

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 24.25(4) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The employer maintains the claimant was considered a voluntary quit for being no-call/no-show to work for one shift. Applebees has no policy in its handbook notifying employees of this. Even if it did, the determining factor here is whether she is disqualified under the provisions of the Iowa Unemployment Security law. Three days of being no-call/no-show to work in violation of a known company rule is considered a voluntary quit without good cause attributable to the employer. As this criteria was not met, disqualification may not be imposed.

DECISION:

The representative's decision of June 2, 2006, reference 01, is affirmed. Tammy Noble is qualified for benefits, provided she is otherwise eligible.

bgh/cs