

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

JAMIE MCFARLIN
1541 ISLAND DR #A
SOUTH SIOUX CITY NE 68776

QWEST CORP
c/o EMPLOYERS UNITY INC
P O BOX 749000
ARVADA CO 80006-9000

RICHARD STURGEON
P O BOX 3372
SIOUX CITY IA 51102

Appeal Number: 05A-UI-08179-SWT
OC: 07/10/05 R: 01
Claimant: Appellant (2)

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:

The claimant appealed an unemployment insurance decision dated August 4, 2005, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on August 24, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing her representative, Richard Sturgeon, and a witness, Denise Simon. Marcie Schneider participated in the hearing on behalf of the employer with witnesses Greg Duncan and Andy Brueckner. Exhibit A was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service associate from April 25, 2005, to July 11, 2005. At the time of hire, a manager informed the claimant that she would be working 8:00 a.m. to 5:00 p.m., Monday through Friday, during her first 16 weeks of

employment, which was her training period. She was informed that afterward her hours of work would be assigned based on seniority.

In June 2005, the employer informed the claimant and other employees in training that for business reasons that their hours would be changing in July 2005, to shifts from 10:00 a.m. to 6:00 p.m. or 11:00 a.m. to 7:00 p.m., with a requirement of working some Saturdays. Employees and the union complained about the change in the hours. In a meeting on June 29, 2005, the site manager announced that the hours would be from 10:00 a.m. to 7:00 p.m. on weekdays with some Saturday work. When employees continued to complain about the change in hours, the site manager announced that if employees were not willing to work the proposed hours, they should quit their employment.

The claimant continued to work until the new hours were imposed on July 11, 2005, and a supervisor informed her that there was nothing that could be done about the new hours. At that point, the claimant quit employment due to a substantial change in the hiring agreement.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without 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.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony was very believable and was corroborated by her witness. The claimant's evidence outweighs the employer's evidence to the contrary. Based on the evidence, the employer substantially changed the contract of hire. While normally an employee must notify the employer that she intends to quit if a breach of the hiring agreement is not corrected (Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993)), such a requirement is futile and not required when a manager informs the employee

that she should quit if she is unwilling to accept the change in the employment, which is what happened here. Good cause for leaving employment has been proven in this case.

DECISION:

The unemployment insurance decision dated August 4, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/s