

**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**

**CATHY A SHELLEY
511 E 1ST ST LOT 49
HUXLEY IA 50124**

**THE CBE GROUP INC
PO BOX 900
WATERLOO IA 50701-0900**

**Appeal Number: 04A-UI-03344-RT
OC: 11-30-03 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 Quitting

STATEMENT OF THE CASE:

The claimant, Cathy A. Shelley, filed a timely appeal from an unemployment insurance decision dated March 16, 2004, reference 02, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on April 14, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. Kim Passick, Director of Operations in Des Moines, Iowa, and Mary Phillips, Senior Vice President of Human Resources in Waterloo, Iowa, participated in the hearing for the employer, The CBE Group, Inc.

The claimant did call and leave a message for the administrative law judge to call her in regards to a continuance and she provided a telephone number for the administrative law judge to call.

The administrative law judge called the claimant at that number at 7:58 a.m. on April 1, 2004, and spoke to the claimant. The claimant stated that she was back at work and wanted the hearing rescheduled. The administrative law judge agreed to reschedule the hearing but needed to know when the claimant would be available. The claimant could not say. The administrative law judge asked the claimant to check with her employer as to when she would be taking lunch or some other break or otherwise when she could do the hearing. The claimant said she would do so and get back to the administrative law judge. The administrative law judge made it clear to the claimant that he would not reschedule the hearing until he heard from her. The administrative law judge never heard from the claimant again. At 2:02 p.m. the administrative law judge tried to call the number that the claimant had provided earlier and reached a voice mail for the claimant. The administrative law judge left a message that he was going to proceed with the hearing and if the claimant wanted to participate she needed to call before the hearing was over and the record was closed. The administrative law judge provided numbers for the claimant to call. The hearing began at 2:06 p.m. and ended when the record was closed at 2:15 p.m. and the claimant had not called during that period of time.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time collector from February 2, 2004 until she voluntarily quit on February 9, 2004. At that time she spoke with her trainer, Wendy Harris, and told her she was resigning and filled out a written resignation form. The claimant stated that she was resigning because she was not learning what she needed to learn and did not feel that she had the skills for the position. However, no one at the employer had requested the claimant to leave or resign, nor had the claimant ever been informed that she was fired or discharged, and continued work was available if the claimant had not quit. The claimant also never expressed any concerns to the employer's witness, Kim Passick, Director of Operations in Des Moines, Iowa, where the claimant was employed, about her working conditions, nor did she do so to anyone else that Ms. Passick heard about. The claimant did not indicate or announce an intention to quit to Ms. Passick, nor did she do so to anyone else that Ms. Passick heard about.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 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.

871 IAC 24.25(21), (33) provides:

(21) The claimant left because of dissatisfaction with the work environment.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The administrative law judge concludes that the claimant left her employment voluntarily when she both orally and in writing informed the employer that she was quitting. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide reasons attributable to the employer for her quit. The employer's witness, Kim Passick, Director of Operations in Des Moines, Iowa where the claimant was employed, credibly testified that the claimant resigned and stated on her written resignation that she was not learning what she needed and did not feel she had the skills. However, Ms. Passick credibly testified that no one at the employer had requested that the claimant leave or resign, nor had anyone informed the claimant that she was fired or discharged. Leaving work because the claimant felt that her job performance was not to the satisfaction of the employer, is not good cause attributable to the employer when the employer had not requested the claimant to leave and continued work was available. Ms. Passick testified that continued work was available. Further, leaving work because of dissatisfaction with the work environment is also not good cause attributable to the employer. There is no evidence that the claimant ever expressed any concerns to the employer about her working conditions or that she ever indicated or announced an intention to quit if any of her concerns were not addressed by the employer.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of March 16, 2004, reference 02, is affirmed. The claimant, Cathy A. Shelley, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits.

dj/b