

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ROBIN R BRANNEN**  
Claimant

**APPEAL NO. 07A-UI-10792-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SR OF IOWA LC  
BURGER KING #9226**  
Employer

**OC: 10/28/07 R: 01  
Claimant: Respondent (2)**

Section 96.5(1) – Quit

**STATEMENT OF THE CASE:**

The employer, Burger King, filed an appeal from a decision dated November 16, 2007, reference 01. The decision allowed benefits to the claimant, Robin Brannen. After due notice was issued a hearing was held by telephone conference call on December 10, 2007. The claimant provided a telephone number to the Appeals Section. That number was dialed at 10:01 a.m. and the only response was a voice mail which clearly identified itself as belonging to “Robin.” A message was left indicating the hearing would proceed without her participation unless she contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 10:10 a.m. the claimant had not responded to the message and did not participate. The employer participated by District Manager Jill Lange and was represented by TALX in the person of Tom Kuiper.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

Robin Brannen was employed by Burger King from February 8, 2006 until October 11, 2007. She had received promotions and at the time of separation was an assistant manager. General Manager Michaela Smith had counseled her from time to time about her attendance, mostly being late, and the employer had worked with her to accommodate her schedule and her childcare needs.

On October 11, 2007, Ms. Brannen called Ms. Smith and quit, saying she was “done.” Continuing work was available to her had she not quit.

Robin Brannen has received unemployment benefits since filing a claim with an effective date of October 28, 2007.

The claimant received the hearing notice and provided a telephone number where she could be contacted. She was not at that number and the hearing was closed at 10:10 a.m. At 3:20 p.m.

the claimant called and the administrative law judge returned the call at 3:56 p.m. After she received the notice of the hearing Ms. Brannen scheduled a job interview for the same time and date as the appeal hearing. She indicated she had forgotten about the appeal hearing and "just spaced it off" when she scheduled the job interview. At no time had she contacted the Appeals Section to request a postponement of the hearing.

#### **REASONING AND CONCLUSIONS OF LAW:**

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(17) 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:

(17) The claimant left because of lack of child care.

The record establishes the claimant quit even though continuing work was available to her. The employer's records do not establish precisely why she quit but it appears problems with childcare was a substantial factor. This may constitute good personal cause but it is not good cause attributable to the employer. The claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

The next issue is whether the record should be reopened. The judge concludes it should not.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

Although the claimant may have intended to participate in the hearing, she failed to keep track of her schedule and make herself available for the hearing at the telephone number she had provided. She did not establish good cause to reopen the hearing and her request to reopen the record is denied.

**DECISION:**

The representative's decision of November 16, 2007, reference 01, is reversed. Robin Brannen is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,208.00.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/css