

**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**

**JUDY K BULLIS
PO BOX 262
WINTERSET IA 50273**

**HARDEES FOOD SYSTEMS INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-04846-LT
OC: 04-03-05 R: 02
Claimant: Respondent (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)

Iowa Code §96.5(1) – Voluntary Leaving
Iowa Code §96.5(2)a – Discharge/Misconduct
Iowa Code §96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed a timely appeal from the April 22, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 26, 2005. Claimant did respond to the hearing notice instructions but was not available when the hearing was called and did not participate. Linda Goff participated in the hearing on behalf of claimant. Employer did participate through Lisa Hendricks.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time cook through April 2, 2005 when she quit. Claimant was a no-call/no-show on April 2. Employer called her at home and claimant said she was sick. Employer asked her what she was supposed to do without a breakfast cook after she had been absent the prior two Saturdays as well. Claimant hung up on her. Claimant picked up her last check on April 8. A note was attached to her paycheck to speak with Hendricks about returning to her job but claimant did not do so. Continued work was available.

Claimant also was a no-call/no-show on March 19 and 26. Claimant said she had personal domestic issues involving a restraining order for her spouse but did not indicate why she could not have called. Employer did not count those absences against her for disciplinary purposes.

Claimant has received unemployment benefits since filing a claim with an effective date of April 3, 2005.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left her 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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer.

Since claimant did not report her absences to the employer but relied upon employer to contact her, hung up on Hendricks when she called claimant about the third Saturday absence in a row, did not attempt to contact Hendricks about rumors she had heard about the schedule, did not attempt to meet with Hendricks when picking up her paycheck or otherwise inquire in to the status of her job, and her assumption of having been fired was erroneous, claimant's failure to continue reporting to work was an abandonment of her job. Benefits are denied.

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.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The April 22, 2005, reference 01, decision is reversed. Claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Claimant is overpaid benefits in the amount of \$763.00.

dml/s