

**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**

**Appeal Number: 04A-UI-01890-DT  
OC: 01/18/04 R: 02  
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, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

**BRIDGETTE M DAY  
4105 – 64<sup>TH</sup> ST  
URBANDALE IA 50322**

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.

**FOODS INC  
4343 MERLE HAY RD  
DES MOINES IA 50310**

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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury  
871 IAC 24.26-6-b – Work-related Illness or Injury

STATEMENT OF THE CASE:

Bridgette M. Day (claimant) appealed a representative's February 16, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 11, 2004. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on January 10, 1983. For at least the past five years prior to June 2003, she worked full time as a price coordinator in the employer's grocery store, working a schedule of Monday through Friday, 7:00 a.m. to 4:00 p.m. Her last day of work was October 30, 2003.

In approximately March 2003, the claimant suffered a work-related injury to her wrist. She went through physical therapy, but a determination was made that due to her injury, she could not return to her prior job duties. As of approximately June 1, 2003, the claimant was assigned to the store's courtesy counter. The claimant was primarily placed on shifts working evenings and weekends, a substantially different schedule than what she had been working. She made repeated requests to management to be given more day shifts, and management replied that it would do what it could. However, the claimant was not given more day shifts.

During the times the claimant was assigned to work at the courtesy counter, she worked with some frequency with a coworker who had bad body odor, to the extent that it made the claimant nauseous, and with a lead worker that repeatedly made disparaging remarks. The claimant complained to management on numerous occasions, and indicated that if the hours issue and the personnel issues were not addressed, she would quit. On October 21 the problem with the coworker with the body odor was particularly bad, and the claimant submitted her notice of resignation to become effective November 8. She had hoped that the employer would then take her concerns seriously and address them in order to maintain her employment. Management did not respond to her notice.

On October 30 the claimant was working an evening shift with both the odiferous coworker and the obnoxious lead worker. The store had just installed a new phone system. The situation became very stressful to the claimant, which she explained to management and asked if she could leave early. The management indicated that she could leave if she felt she must, and so she did. She later called in to find out what the rest of her work schedule would be, and was informed she had been removed from the work schedule.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code Section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence,

and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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.

Due to the extreme difference in the hours for work, the position at the courtesy counter was not a reasonable accommodation for the claimant's inability to work her prior position due to the work-related injury. The employer was unable or unwilling to provide reasonable accommodation in order to retain the claimant's employment. The extreme change in her days and hours of work were a substantial change in her conditions of employment. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's February 16, 2004 decision (reference 01) is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

ld/b