

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

KANDI S JONES

Claimant,

and

REO ENTERPRISE INC

Employer.

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HEARING NUMBER: 08B-UI-01369

EMPLOYMENT APPEAL BOARD
DECISION

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Kandi S. Jones, worked for REO Enterprise, Inc./Hardee's from June 1999 through December, 2007 as a full-time assistant manager. (Tr. 2) The claimant informed her employer that "... [she] was planning on moving out of state because [her] husband's

job was relocating.” (Tr. 2) Since she had three children to support, she would stay back until she could find employment in Illinois. (Tr. 3) The employer then told her that she could “... just be transferred to a different location since [she] was an employee of good standing for eight years...” (Tr. 2)

The claimant moved to Illinois the first week of January 2008. (Tr. 3) When she got there, however, the employer contacted her to inform her “... that he wasn’t able to get [her] the position like he had said...” (Tr. 2) Ms. Jones was considered to have quit her job in Iowa.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) (2007) provides:

An individual shall be disqualified for benefits: *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 employer 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...

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).

We find in the claimant’s testimony that she had no intention to quit her employment until she could secure employment where her husband had previously relocated to be credible in light of the fact that she still had three children to support. Quitting a job under those circumstances would have been impractical. Additionally, Ms. Jones decision to leave her Iowa employment in December was predicated on the employer’s tacit promise that she would be transferred to a position in Illinois. Thus, Ms. Jones reasonably relied on the employer’s direction. Believing she had secured employment in this new locale, she promptly ending her Iowa employment.

The employer failed to participate in the hearing to refute any of the claimant's testimony regarding her quit. Therefore, her testimony is the best evidence in the record to establish that her quit was, in fact, for good cause attributable to the employer as it was the employer who told her, initially, that she would have employment to which she could transfer, but did not materialize.

DECISION:

The administrative law judge's decision dated February 27, 2008 is **REVERSED**. The claimant voluntarily quit with good cause attributable to the employer. Accordingly, she is allowed benefits provided she is otherwise eligible.

Elizabeth L. Seiser

John A. Peno

AMG/kjo

DISSENTING OPINION OF MARY ANN SPICER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Mary Ann Spicer

AMG/kjo