

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

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PAUL'S TRUE VALUE INC
PAUL'S TRUE VALUE
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GRINNELL IA 50112

Appeal Number: 04A-UI-06482-H2T
OC: 12-21-03 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, 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 Leaving – Layoff
Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 28, 2004, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on July 8, 2004. The claimant did participate. The employer did participate through Linda Nowasell, Owner. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a sales clerk full time beginning April 18, 2002 through December 14, 2002 when she laid off because business was slow and additional work was not

available for her according to Ms. Nowasell. The decision to end the claimant's employment also was made because the employer was unhappy with what it perceived to be the claimant's attendance problems at work. Ms. Nowasell admits that the claimant was never warned that her job was in jeopardy due to attendance issues and that no formal warning regarding her attendance was ever given to the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

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.

According to the testimony of the co-owner of the business, Ms. Nowasell, the claimant was laid off due to lack of work. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed.

The employer's allegation that the claimant was discharged due to absenteeism has not been established. Ms. Nowasell admits the claimant was never warned that her job was in jeopardy, nor was she ever given any written warnings about her attendance or other performance issues.

The claimant has established that she never received the representative's decision dated January 28, 2004, thus her appeal is timely.

DECISION:

The January 28, 2004, reference 03, decision is reversed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/b