

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

TRICIA L SCHALLER
6110 APACHE CT
DUBUQUE IA 52002

CREST FOAM CORPORATION
c/o TALX EMPLOYER SERVICES
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-07980-DT
OC: 06/25/06 R: 04
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Tricia L. Schaller (claimant) appealed a representative's August 3, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Crest Foam Corporation (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on August 24, 2006. Prior to the hearing being held, the employer notified the Appeals Section that it would not be participating in the hearing. At the scheduled time for the hearing, but in lieu of proceeding with the hearing, the administrative law judge determined, and the claimant concurred, that no hearing was necessary and that a decision could be made on the record, including the claimant's appeal documents. Based on a review of the information in the

administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 3, 1994. On or about June 19, 2006, the claimant tendered her two-week notice resignation. Her last day would have been end of work on June 30, 2006. She gave her notice because she had accepted a new job which was scheduled to begin the following week. On or about June 27, 2006, the employer announced a temporary shutdown for June 28, June 29, and June 30, 2006. As a result, the claimant's last day of work for the employer was June 27 instead of June 30, 2006. Since she had only worked two days that week, June 26 and June 27, the claimant established an unemployment insurance benefit year effective June 25, 2006 and filed one weekly claim reporting \$152.00 in wages and seeking partial unemployment insurance benefits for the week ending July 1, 2006. She did in fact begin her new employment the week beginning July 2, 2006, and to date has not filed any additional weekly claims for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

There are two separation incidents that must be reviewed in this case. The first created an issue of whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code section 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did voluntarily quit effective the week beginning July 2, 2006 in order accept other employment. The claimant is not disqualified from receiving benefits as a result of this quit in the event of a future separation from employment, but the employer's account will not be charged for any benefits that may become payable to the claimant for benefit weeks after the week ending July 1, 2006.

The next issue in this case is whether there was a disqualifying separation prior to the effective date of the claimant's quit,

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The claimant's separation from employment on June 27 and the reason she was unemployed on June 28, June 29, and June 30, 2006 was due to a temporary shutdown by the employer; the layoff became permanent as to the claimant because of the coincidence between the layoff and her previously announced resignation for new employment. Therefore, the June 27, 2006 separation was attributable to a lack of work by the employer. Benefits are allowed. The employer is chargeable for partial benefits paid to the claimant for the week ending July 1, 2006.

DECISION:

The representative's August 3, 2006 decision (reference 01) is modified in favor of the claimant. The claimant voluntarily left her employment, but the quit was not disqualifying. The employer's layoff of the claimant prior to the effective date of the quit was not disqualifying. The claimant is eligible for unemployment insurance benefits, provided she is otherwise eligible. The employer is chargeable for any benefits paid for the week ending July 1, 2006. The employer is not chargeable for any benefits for any weeks after the week ending July 1, 2006.

ld/kjw