

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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AMENDED

Appeal Number: **04A-UI-04654-LT**
OC 04-04-04 R 03
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)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Employer filed a timely appeal from the April 22, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 17, 2004. Claimant did respond to the hearing notice instructions but was not available when the hearing was called and did not participate. Employer did participate through Tom Primmer and Mary Ann Towsley.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time on-call banquet server through February 17, 2004 when she quit. She was a no call-no show on January 28, 2004 and was later called to work but a friend, Christina Barton, said on February 10 she had quit because she was not getting enough hours.

Claimant had missed several days in the weeks prior to the separation because of a lack of transportation. Claimant called before January 28, 2004 for the February 2004 schedule and was told it was not done yet. She did not call back for the schedule or ask for work hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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.

871 IAC 24.25(1) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee 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. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

871 IAC 24.22(2)i(3) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

- (2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market....

- i. On-call workers.

- (3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2 (amended 1998).

Claimant's abandonment of her employment relating to a lack of hours was directly connected to her inability to provide her own transportation. Employer had no duty to continue to offer on-call work when claimant failed to report because of a lack of transportation and did not contact employer about her desire for more work or her inability to get to work. Benefits are denied.

DECISION:

The April 22, 2004, reference 01, decision is reversed. The 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.

dml/s