

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

GAYLE A BYERLY
613 ELM ST
COON RAPIDS IA 50058

HARRIS HESS
111 – 6TH AVE
COON RAPIDS IA 50058

Appeal Number: 04A-UI-11482-BT
OC: 10/03/04 R: 01
Claimant: Appellant (1)

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 Quit

STATEMENT OF THE CASE:

Gayle Byerly (claimant) appealed an unemployment insurance decision dated October 22, 2004, reference 02, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Harris Hess (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 16, 2004. The claimant participated in the hearing. The employer participated through Harris Hess.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time home health aide from April 1999 through October 7, 2004. She had previously quit several times and the employer had allowed her to return to her employment. On October 7, 2004, the employer became upset with the claimant and another employee about how they were treating Marjorie Hess, an 81 year-old woman for whom they provided care. When the claimant returned home, Ms. Hess complained to the employer about the care she was receiving. The employer was aware the claimant acted short with Ms. Hess and was not as kind and caring as she could have been. The employer became upset and started yelling at the claimant and her co-worker. Words were said and the employer told both employees that they needed to adapt to Ms. Hess or get out. The claimant and her co-worker left. The claimant called the employer the following day to see if she had a job and was told she had voluntarily quit.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

The claimant contends she was fired but the employer contends the claimant quit. The findings of fact reflect a resolution of the disputed issues in this case based on a careful assessment of the credibility of the witnesses and reliability of the evidence. If the claimant had been fired, it is doubtful she would call the employer on the following day to inquire as to whether she still had a job since it would have been clear. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated her intent and acted to carry it out when she walked off the job on October 7, 2004, after being reprimanded by her employer.

The claimant has the burden to prove that the voluntary quit was for a good reason that would not disqualify her. Iowa Code section 96.6-2. The employer was upset with the claimant and her co-worker because he felt they were being abusive to Marjorie Hess, who was elderly and unable to provide care for herself. The employer told both individuals they either needed to adapt or get out since the 81 year-old woman was not going to change. The claimant left in response to that statement. The law presumes it is a quit without good cause attributable to the employer when an employee leaves after being reprimanded. 871 IAC 24.25(28). The claimant has failed to establish good cause for leaving her employment. Benefits are denied.

DECISION:

The unemployment insurance decision dated October 22, 2004, reference 02, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

sdb/tjc