

**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**

**SHERYL S BEHRENS  
3117 E HIGHVIEW DR  
DES MOINES IA 50320-2084**

**MAXIM HEALTHCARE SERVICES INC  
C/O TALX UCM SERVICES INC  
PO BOX 66864  
ST LOUIS MO 63166-6864**

**Appeal Number: 06A-UI-07644-JTT  
OC: 07/02/06 R: 02  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit  
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Sheryl Behrens filed a timely appeal from the July 24, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 15, 2006. Ms. Behrens participated and presented additional testimony through her husband, Michael Graber. Accounts Manager Shannon Howes represented the employer and presented additional testimony through Senior Recruiter Amanda Meyer. Employer's Exhibits One through Six were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On May 20, 2005, Sheryl Behrens commenced her employment with Maxim Healthcare Services as

a part-time home healthcare aide. Ms. Behrens last performed services for the employer on May 28, 2006. On that date, Ms. Behrens experienced a muscle sprain in her shoulder and upper arm area after providing home healthcare services to a client that morning. The employer's attendance policy required Ms. Behrens to contact the employer at least four hours prior to the scheduled start of her shift if she needed to be absent. Ms. Behrens was scheduled to provide services to another client the evening of May 28, but properly notified Senior Recruiter Amanda Meyers that she was sore and requested that the employer make other arrangements. During the evening of May 28, Ms. Behrens' husband contacted Ms. Meyers to advise that he was taking Ms. Behrens to the emergency room due to back swelling and pain. Ms. Meyers requested an update after the trip to the emergency room. Later that night, Ms. Behrens telephoned Ms. Meyers. Ms. Behrens indicated the doctor had diagnosed a work-related back injury. Ms. Meyers advised Ms. Behrens that if the injury was work related, Ms. Behrens would need to come in the next day to complete appropriate paperwork.

On May 30, Ms. Behrens went to the workplace and met with Ms. Meyers to initiate the workers' compensation claim process. Ms. Meyers provided Ms. Behrens with referral paperwork Ms. Behrens would need to present the employer's workers' compensation health care provider, Concentra. Ms. Behrens went to be examined by a doctor at Concentra the same day. After her appointment, Ms. Behrens telephoned Ms. Meyers to advise that had been seen by the doctor, that the doctor had restricted her to light duty work, and that Concentra was going to fax the medical restriction to the employer later that day. Ms. Meyers received the medical restrictions documentation from Concentra the same day.

On June 2, Ms. Meyers contacted Ms. Behrens to discuss Ms. Behrens' return to work on light-duty status. Ms. Behrens had previously been on light-duty status at Maxim Health on multiple occasions. The employer had previously assigned Ms. Behrens to work in the office when she required light-duty work. As with previous light-duty assignments, Ms. Behrens would continue to work her usual 15-20 hours per week. Ms. Meyers discussed the restrictions with Ms. Behrens and entered into an agreement with Ms. Behrens that Ms. Behrens would appear for first light-duty shift on June 8, after her physical therapy appointment ended. The physical therapy appointment was scheduled for 9:00 a.m., was expected to last one hour. Ms. Meyers anticipated Ms. Behrens would arrive at the workplace by 10:15 a.m.

Ms. Behrens did not appear for her light-duty shift on June 8. When she did not appear by 10:30 a.m., Ms. Meyers telephoned Ms. Behrens' cell phone and made contact with Ms. Behrens. Ms. Behrens advised that she had been about ready to call Ms. Meyers to advise she was not coming to work. Ms. Behrens advised that her teenaged son had run away the night before and that she would not be coming to work until the following morning. Ms. Meyers reminded Ms. Behrens that she needed to comply with the attendance policy by notifying the employer if she needed to be absent from work. Ms. Behrens became belligerent and asked Ms. Meyers, "Why the fuck do I need to tell you everything about my personal life? That is for me and my husband to know, not you." Ms. Meyers indicated that she did not need to know about Ms. Behrens' personal life, but did need to be notified if Ms. Behrens was not going to be at work. Ms. Behrens repeated her previous remark, including the profanity. Ms. Behrens then hung up on Ms. Meyers. Ms. Meyers immediately telephoned Ms. Behrens at her cell phone. Ms. Behrens did not answer. Ms. Meyers left a voice mail message in which she apologized for any misunderstanding, but affirmed that she did need to know what was going on when Ms. Behrens did not make it to work. Ms. Meyers immediately documented the contact with Ms. Behrens.

On June 9, Ms. Meyers once again telephoned Ms. Behrens' cell phone and left a message inquiring about when Ms. Behrens would be returning to work. Ms. Behrens did not respond to the message. Ms. Behrens did not come to work on June 9, despite her statement on June 8 that she would be in the next morning. Thereafter, Ms. Behrens made no contact whatsoever with the employer and made no attempt to contact the employer.

On June 19, Ms. Meyers made contact with Ms. Behrens at her cell phone. Ms. Meyers told Ms. Behrens that the employer had decided to terminate the employment based on Ms. Behrens' conduct during the June 8 telephone call and Ms. Behrens' failure to appear for her light-duty assignment for more than a week. Ms. Behrens advised that she had already assumed she had been fired. Ms. Meyers immediately documented the contact with Ms. Behrens.

#### REASONING AND CONCLUSIONS OF LAW:

The first question the administrative law judge must address is whether the evidence in the record indicates a quit or a discharge.

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The greater weight of the evidence indicates that Ms. Behrens voluntarily quit the employment. Ms. Behrens indicated her intention to quit the employment by hanging up on Ms. Meyers on June 8, by failing to report to work on June 8, June 9 or any date thereafter, by failing to respond to the messages the employer left on her cell phone, and by failing to make any contact whatsoever with the employer after June 8. Prior to June 19, the employer conveyed nothing to Ms. Behrens regarding a discharge. Ms. Behrens' response during that call indicated she had already concluded she would not be returning to the employment and decided to make no further contact with the employer. The administrative law judge concludes that the separation from employment had already occurred at the time the employer contacted Ms. Behrens on June 19. The evidence indicates that Ms. Behrens' quit was prompted by her need to attend to her family responsibilities, dissatisfaction with the work environment, and a personality conflict with a supervisor. Each of these reasons for quitting is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(23), (21), and (22).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Behrens voluntarily quit the employment without good cause attributable to the employer. The quit was a disqualifying event. Accordingly, the employer's account will not be charged.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage

credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Ms. Behrens lacks sufficient other wage credits to be eligible for reduced benefits. Accordingly, Ms. Behrens is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

DECISION:

The Agency representative's July 24, 2006, reference 01, decision is affirmed. The claimant voluntarily quit without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account will not be charged.

jt/pjs