

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

TRACY LOVE
411 MAPLE ST
DEXTER IA 50070

CRACKER BARREL OLD COUNTRY
STORE INC
c/o TALX EMPLOYER SERVICES
PO BOX 429503
CINCINNATI OH 45242-9503

Appeal Number: 06A-UI-00709-BT
OC: 12/18/05 R: 02
Claimant: Respondent (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 5-2-a – Discharge for Misconduct
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Cracker Barrel Old Country Store, Inc. (employer) appealed an unemployment insurance decision dated January 11, 2006, reference 01, which held that Tracy Love (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 21, 2006. The claimant participated in the hearing. The employer participated through Christine Burhenne, Retail District Manager.

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 retail manager from May 10, 1994 through December 21, 2005. She was placed on a performance improvement plan on October 20, 2005 for 90 days and had to reach ten goals or her employment would be terminated. The claimant asked her manager how she was doing on December 11 and the employer stated she would meet with her in a week. The employer met with the claimant on December 15 and told the claimant she was not a "good fit" for that store and was not what the company was looking for in an employee. She was advised that if she continued working without improvement, she would be terminated at the end of January 2006. If she were to be terminated, she would lose all vacation that she had accumulated. The employer further advised the claimant she could continue to work for another month if she opted to quit, so the claimant agreed to quit. However, prior to the effective date of her resignation, the employer discharged the claimant on December 21, 2005 because the employer believed the claimant was "bad mouthing" the company. The claimant was not advised as to why she was terminated at that time.

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.

Rule 871 IAC 24.25 provides that, 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. An employee quits her job when she intends to quit and carries out that intent by some overt act. Peck v. Employment Appeal Bd., 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). The claimant voluntarily quit on December 15, 2005 with an effective date of January 16, 2006. She quit her employment after the district manager advised her she was not a good fit for the store and was not what the company was looking for in an employee. The employer advised the claimant if she did not quit and was fired, she would lose her vacation days. The claimant left her employment so that she would not lose her vacation time. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant satisfied that burden and her voluntary quit was with good cause attributable to the employer.

However, when an individual is discharged prior to an effective date of resignation, benefits are allowed from the last day worked until the effective date of the resignation, unless the claimant was discharged for work-connected misconduct. 871 IAC 24.25(38). The claimant was discharged prior to the effective date of her resignation because she "bad mouthed" the company.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer assumed the claimant was "bad mouthing" the company because there were several employees upset that she was being forced out and the employer did not view the facts in that same light. The employer did not disclose what the claimant was supposed to have said that was inappropriate and the Administrative Law Judge concludes work-connected misconduct as defined by the unemployment insurance law has not been established. Benefits are allowed.

DECISION:

The unemployment insurance decision dated January 11, 2006, reference 01, is affirmed. The claimant separated from her employment due to non-disqualifying reasons. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

sdb/s