

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

MINDY J SHACKELFORD
603 W MILLS ST
CRESTON IA 50801-2132

ADVANCE SERVICES ADMINISTRATION
PO BOX 1463
NORFOLK NE 68702-1463

Appeal Number: 06A-UI-07209-DT
OC: 06/18/06 R: 03
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 Leaving

STATEMENT OF THE CASE:

Mindy J. Shackelford (claimant) appealed a representative's July 11, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Advance Services Administration, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 7, 2006. The claimant participated in the hearing. Lisa Vetter appeared on the employer's behalf and presented testimony from one other witness, Shawn Duff. Based on the evidence, the arguments of the parties, 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 employer is a temporary employment and permanent staffing firm. The claimant initially began as a person taking assignments with the employer on July 16, 2003. She began a temporary assignment internally in the employer's Creston, Iowa office in March 2004, to which she returned on May 8, 2004, before becoming permanent in the position on August 16, 2004. She worked full time as a human resources coordinator on an 8:00 a.m. to 5:00 p.m. schedule. Her last day of work was June 16, 2006.

The claimant had been given prior warnings due to attendance, including a final warning on May 11, 2006. On May 19, 2006, the claimant called and left a message at about 4:00 a.m. indicating that she would be absent that day as she had taken her six-year old child to the emergency room due to bronchitis. At 9:00 a.m. she called and spoke to the office manager to reiterate her reason for absence; she told the office manager that she would come in early the next day to make up some time.

The employer's corporate office was made aware of the claimant's new absence. Ms. Duff, the area manager who had gone to the Creston office that day, spoke with the vice president and came to a conclusion that pursuant to the May 11 final warning, the claimant should probably be discharged. Ms. Duff proceeded to place the claimant's personal items into a box about 11:00 a.m. on May 19. However, Ms. Vetter, the customer relations manager, became aware of the situation, and recommended waiting until there had been an opportunity to meet with the claimant before making a final decision. Ms. Duff and the vice president agreed, and Ms. Duff and Ms. Vetter arranged to rendezvous at the Creston office on the morning of June 20 to meet with the claimant when she came in.

Ms. Vetter arrived at the office location approximately 7:25 a.m. and waited in the parking lot for someone to arrive with a key, assuming the office was locked. Ms. Duff arrived at approximately 7:40 a.m. and discovered that when she attempted to unlock the door, she actually had locked it. Entering the office to wait for the claimant, they discovered at approximately 7:50 a.m. that there was a note on the office manager's desk signed by the claimant saying "I will save you the trouble. Bye." The box with the claimant's personal items was also gone. The claimant's office key was with the note, explaining why the door had initially locked, rather than unlocked, when Ms. Duff first used her key, as the key can only be used from the outside of the door. The claimant had come into the office earlier that morning, approximately 7:15 a.m., saw her personal items in the box and assumed she was going to be discharged, decided not to stay to be discharged, wrote the note, left the key, and left before Ms. Vetter's arrival in the parking lot at 7:25 a.m. No one on behalf of the employer had told the claimant that she was in fact going to be discharged.

After discovering the note and key, because of discovering that the claimant had also taken a personnel file with her when she left, the employer did not seek to correct the claimant's perception about whether she would have been discharged or seek to persuade her to change her mind about leaving.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code § 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.

Where an individual mistakenly believes that she is discharged and discontinues reporting to work, but was never told she was discharged, the separation is considered a voluntary quit without good cause attributable to the employer.

871 IAC 24.25 provides examples of situations which are considered to be voluntary quits without good cause, including:

871 IAC 24.25(27), (28), (33) 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 § 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 § 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:

(27) The claimant left rather than perform the assigned work as instructed.

(28) The claimant left after being reprimanded.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

Inasmuch as the employer had not told the claimant she was fired and the claimant left prior to determining the status of her employment relationship with the employer, she acted in a manner such that the employer would reasonably believe she had resigned her position. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify the claimant. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

DECISION:

The representative's July 11, 2006 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of June 20, 2006, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

ld/pjs