

**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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**Appeal Number: 05A-UI-07761-H2T
OC: 06-19-05 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 Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 22, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 16, 2005. The claimant did participate. The employer did participate through Joe Connell, Manager of Store Operations; Marla Gentry, Human Resources Coordinator; Todd Tetmeyer, Store Director; and was represented by David Williams of TALX UC eXpress.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a cashier part time beginning March 8, 1999 through April 24, 2005, when she voluntarily quit. The claimant returned from a leave of absence on March 12, 2005. Thereafter she was scheduled to retrain as a cashier and to work in the bakery for a number of

hours. The claimant last worked on April 24, 2005. She was instructed to call in to check and see if additional hours were available for her if another employee was absent. The claimant admitted that she continued to check in for additional hours but stopped after a period of time because she became tired of checking. The claimant was scheduled to work on May 4, 5 and 18. The claimant was a no-call/no-show for each of those shifts. The employer did not hear from the claimant again until sometime in June when she was in the store shopping. At that time she spoke to Joe Connell and asked him when she was going to be put back on the schedule. Mr. Connell did not tell the claimant that the employer considered her employment over because she was a three-day no-call/no-show; instead, Mr. Connell asked her to provide him with the hours she was available to work so that she could be scheduled. The claimant told Mr. Connell that she would not be available to work at all during the month of July. Mr. Connell never heard from the claimant again and the employer considered her a voluntary quit on June 27, 2005, when they learned that she had applied for unemployment insurance benefits.

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.

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).

The claimant was asked in June to provide the hours that she would be available to work. She did not do so. The claimant admitted she had stopped even checking the schedule sometime in May to see if she had hours assigned to her. The claimant was a no-call/no-show for three shifts.

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). By failing to check her schedule and by failing provide the employer with the hours she was available to work, the claimant indicated her intention to quit working. She has not established that her leaving was with good cause attributable to the employer. Benefits are denied.

DECISION:

The July 22, 2005, reference 01, decision is affirmed. 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.

tkh/kjw