

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

PAMELA DAVIS
1958 BROADWAY APT 7-B
IOWA CITY IA 52240

LABOR READY MIDWEST INC
ATTN – PAYROLL TAX DEPT
PO BOX 2910
TACOMA WA 98401-2910

LABOR READY MIDWEST INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05O-UI-07928-BT
OC: 11/21/05 R: 03
Claimant: Appellant (5)

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)

871 IAC 26.14(7) - Late Call
Section 17A.12-3 - Non-Appearance of Party
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Pamela David (claimant) appealed an unemployment insurance decision dated May 4, 2005, reference 08, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Labor Ready Midwest, Inc. (employer) without good cause attributable to the employer. Administrative Law Judge Brightman conducted an initial hearing on this matter in appeal 05A-UI-05069-BT in which benefits were denied. The claimant appealed the decision and the Employment Appeal Board remanded for additional evidence in an order dated July 28, 2005. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 22, 2005. The

claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Dixie Darby, Branch Manager. Employer's Exhibit One was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired by this temporary staffing firm as light labor employee on September 9, 2004. Unless she had an ongoing assignment, she was to report to work each morning when she wanted to work. The claimant worked four hours on September 12, 2004, but no other days that month. She worked on October 16, 24, and 26. She did not work in November or December 2004.

The claimant worked on January 3, 6, and 13, 2005. She was scheduled to work on January 5, 2005 but did not show. She worked on February 8, 10, 11, 12, 16, 22, 24, 25, 26, and a partial day on February 27. The claimant refused to come in for a repeat ticket on February 9, was a no-call/no-show on February 23, and walked off the job on February 27. She was supposed to work on February 15, 17 and 18 but did not report for work. She worked on March 11, 12, 14, 15, 17, 18, 21, 25, 30, and 31 but was a no-call/no-show on March 13, 2005.

The claimant worked on April 7, 13, 25; May 17, 18, 19, 26; June 1, 8, 9, 21, 30; July 11 and 13, 2005. She was called for work on July 14 but did not work and was a no-call/no-show on August 19, 2005. The claimant was hired on a part-time basis with no guarantee in hours or wages. She works only when she wants to work and she continues to be employed in that same capacity. There was no separation from this employer.

The claimant contacted the Appeals Section at 11:23 a.m. The record closed at 11:19 a.m. The claimant received the hearing notice prior to the August 22, 2005 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The claimant received the hearing notice on the weekend and forgot to call the Appeals Section during the week. The claimant requested that the record be reopened.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. If a party responds to a hearing notice after the record has been closed, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

The next issue to be determined 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 was hired on a part-time basis, working only when she wants to work. She is still employed in that same contract of hire with no changes in her hours or wages. Consequently, the claimant is not qualified to receive benefits as there has been no separation from employment.

DECISION:

The unemployment insurance decision dated May 4, 2005, reference 08, is modified with no effect.. The claimant is disqualified from receiving benefits.

sdb/kjw