

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

KAROLINA I SHAW
6733 S 153RD CIR
OMAHA NE 68137

PAYLESS SHOESOURCE INC
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 04A-UI-04333-DT
OC: 03/21/04 R: 12
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:

Karolina I. Shaw (claimant) appealed a representative's April 6, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Payless Shoesource, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 10, 2004. The claimant participated in the hearing. Tom Lindquist of Employer's Unity appeared on the employer's behalf and presented testimony from one witness, Mike Timmerman. 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: Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on or about October 9, 1995. Since approximately 1999, she worked full time as a manager of one of the employer's Council Bluffs, Iowa stores. Her last day as manager was February 29, 2004. As of March 1, she became a field auditor in training, a position for which she had applied in November 2003.

As part of the negotiations and the offer of the field auditor position that the claimant accepted on February 12, 2004, the claimant understood that the position she had accepted would require her to relocate to the Oklahoma City, Oklahoma area. She began her training, completing the first week in Kansas City, Missouri and the next two weeks in Oklahoma City, during which time she stayed in housing provided by the employer. On March 19, she left Oklahoma City, and left a voice mail message for Mr. Timmerman, the field auditor zone manager, indicating that she was resigning because the separation from her family was too difficult. She confirmed this to him when he contacted her by phone on March 22.

The claimant had lived in Omaha, Nebraska and commuted to the employer's store in Council Bluffs. The claimant has two high school age children who live with the claimant's ex-husband within a half hour drive. Shortly after the claimant began her training, her ex-husband accepted a promotion in his job that required him to work nights. However, this left the children unsupervised during the evenings. The concern for her unsupervised children, coupled with the degree to which the claimant's separation from her family had caused her to miss them and they her, caused the claimant to decide to resign her position and return to the Omaha area.

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 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.

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. The claimant did express her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code Section 96.6-2. While the claimant had a good personal reason for leaving to deal with family responsibilities, it is not a cause attributable to the employer. 871 IAC 24.25(20), (23). The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's April 6, 2004 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 19, 2004, 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/kjf