

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

KRISTI M LOERS  
550 COUNTRYSIDE DR APT 3  
LEMARS IA 51031

5326 INC  
D/B/A IHOP  
6300 N 7TH ST  
LINCOLN NE 68521

Appeal Number: 04A-UI-03148-RT  
OC: 02/15/04 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Kristi M. Loers, filed a timely appeal from an unemployment insurance decision dated March 17, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on April 9, 2004, with the claimant participating. Mike Roberts, Director of Operations, participated in the hearing for the employer, 5326, Inc., doing business as IHOP. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. When the administrative law judge first called Mr. Roberts at 9:01 a.m. he reached a "Carmen" who said Mr. Roberts was not there. The administrative law judge left a message that he was going to proceed with the hearing and if Mr. Roberts wanted to participate he needed to call before the hearing was over. Mr. Roberts called at 9:09 a.m. and provided a new number which the administrative law judge called at 9:12 a.m. and Mr. Roberts participated in the balance of the

hearing. On March 29, 2004, at 4:07 p.m., the administrative law judge spoke to the claimant, who initially requested a rescheduling for later in the day, but when the administrative law judge informed her that his schedule was full that day she decided to leave the hearing as is and she would participate. The claimant did participate in the hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a part-time waitress from the end of October 2003 until she separated from her employment on December 5, 2003. On or about December 5, 2003, the claimant left for maternity time. The employer has no maternity leave available except through FMLA which applies only after someone has worked for the employer one year and the claimant had not. In any event, in the middle of January 2004, the claimant returned to the employer and offered to go back to work, but only work one day per week because she was going back to college. The claimant did not speak to a manager about this, but was told by someone that working one day was not permitted. The employer does not permit employees to work just one day per week. Prior to leaving for her maternity time off, the claimant had been working three to four days a week averaging between 20-30 hours per week.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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:

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 section 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 section 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.

871 IAC 24.25(26) provides:

(26) The claimant left to go to school.

Iowa Code Section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

The first issue to be resolved is the character of the separation. The claimant maintains no particular form of separation, but testified that she was on a leave of absence and then essentially never returned thereafter. Although she did offer to go back to work for one day instead of the three to four days she had been working. The employer testified that the claimant voluntarily quit on December 5, 2003 when she left to take time for maternity. The administrative law judge concludes that the claimant actually left her employment voluntarily on December 5, 2003. The evidence establishes that the employer has no particular maternity leave except through FMLA, which only applies when the claimant has worked one year. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant testified that she left on a maternity leave for six weeks, but the evidence does not establish that it was an official maternity leave in as much as the claimant was not entitled to leave under the FMLA. In any event, the claimant had been working three to four days per week averaging between 20 to 30 hours. After the maternity time off, the claimant returned to the employer and offered to go back to work, but not at her regular work of three to four days per week but only for one day a week and the employer does not permit employees to work one day. There is also not a preponderance of the evidence that the claimant ever spoke to any manager, but spoke to someone else who apparently told the claimant that she couldn't come back for just one day. In any event, the claimant's offer to return to work was not for her regular work and the employer did not refuse to rehire the claimant for her regular work or comparable work. Further, there is no evidence that the claimant left her employment upon the advice of a licensed and practicing physician and upon knowledge of the necessity immediately notified the employee or the employer consented to the absence and that there is no evidence that she had recovered and was certified to return to work. Finally, the most crucial element absent is the fact the claimant never offered to go back to her regular work. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and Iowa Code Section 96.5-1-d does not apply to the claimant because she

never offered to go back to her regular work. The claimant testified that she did not offer to go back to her regular work because she was going to school. Leaving working voluntarily to return to school is not good cause attributable to the employer.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

**DECISION:**

The representative's decision dated March 17, 2004, reference 01, is affirmed. The claimant, Kristi M. Loers, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits.

kjf/b