

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

TAMMY L NAVARRETE
318 PINE ST
MUSCATINE IA 52761

CATHY SAMUELSON & CRAIG
SAMUELSON
D/B/A CHERI TOP
1701 GRANDVIEW AVE
MUSCATINE IA 52761

Appeal Number: 04A-UI-11835-RT
OC: 10/10/04 R: 04
Claimant: Appellant (2)

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 Quitting

STATEMENT OF THE CASE:

The claimant, Tammy L. Navarrete, filed a timely appeal from an unemployment insurance decision dated October 26, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on November 24, 2004, with the claimant participating. Cathy Samuelson, Co-Owner, participated in the hearing for the employer, Cathy Samuelson and Craig Samuelson, doing business as Cheri Top. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

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 full time seasonal cook from March 15, 2004 until she was laid off effective October 1, 2004. The employer operates a restaurant business, which closes at the end of the summer season. The business was to close on October 9, 2004. However, because business was already slow and the claimant needed to look for other work the claimant was laid off on October 1, 2004. At all material times hereto, the claimant was aware that the employer was going to close its business for the season on October 9, 2004. The employer does not contest the claimant's unemployment insurance benefits. The claimant filed a claim for unemployment insurance benefits effective October 10, 2004, and filed her first weekly claim for benefit week ending October 16, 2004, the week after the employer had closed its business.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal whether the claimant's separation from employment was a disqualifying event. It was not.

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(40) provides:

(40) Where the claimant voluntarily quit in advance of the announced scheduled layoff, the disqualification period will be from the last day worked to the date of the scheduled layoff. Benefits shall not be denied from the effective date of the scheduled layoff.

The parties agree that the claimant was laid off for a lack of work on October 1, 2004, and the administrative law judge so concludes. Being laid off for a lack of work is not disqualifying. The evidence establishes that the employer operates a seasonal restaurant which closes in the fall and was set to close, and did in fact close, on October 9, 2004. The claimant was aware in advance that the employer was going to close on October 9, 2004 and because business was slow the claimant was laid off on October 1, 2004 so that she could look for another job. Under the evidence here, the administrative law judge concludes that the claimant was laid off for a lack of work and this is not disqualifying.

Even should the claimant's separation be considered a voluntary quit on October 1, 2004, the claimant quit in advance of an announced scheduled lay off and the disqualification would only be from the last day worked to the date of the scheduled lay off. Benefits shall not be denied from the effective date of the scheduled lay off. Here, the scheduled lay off was effective October 9, 2004 and the claimant did not file for unemployment insurance benefits until after that time. Accordingly, the administrative law judge concludes that the claimant was laid off for a lack of work effective October 1, 2004, and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided she is otherwise eligible.

DECISION:

The representative's decision dated October 26, 2004, reference 01, is reversed. The claimant, Tammy L. Navarrete, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she was laid off for a lack of work.

kjf/kjf