

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

ROBERTA CARIS
4921 SHEFFIELD PL
IOWA CITY IA 52245

NORDSTROM INC
c/o TALX UCM SERVICES INC
PO BOX 283
SAINT LOUIS MO 63166-0283

Appeal Number: 05A-UI-03827-S2T
OC: 02/27/05 R: 03
Claimant: Respondent (2)R

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 Quit

STATEMENT OF THE CASE:

Nordstrom (employer) appealed a representative's March 31, 2005 decision (reference 02) that concluded Roberta Caris (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 3, 2005. The claimant participated personally. The employer was represented by Peg Heenan, Attorney at Law, and participated by Robin Pospisil, Human Resources Manager, and Lana Lenz, Senior Recruiter.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 15, 2004, as a part-time personal shopper. At the time the claimant was hired the employer told her they would try to schedule her for 20 hours per week but there were no guarantees. The claimant requested she work Sunday through Thursday, 4:00 to 8:00 p.m.

The claimant worked at least 40 hours per paycheck until the two-week pay period ending December 31, 2004. She worked 38.26 hours. The two-week pay period ending January 15, 2005, the claimant was scheduled for 37.06 hours but she was absent two days due to weather. The claimant could have scheduled additional hours but was busy attending part-time school and volunteering at her children's school. Once the employer scheduled the claimant to work Monday through Friday. The claimant accepted the hours.

On December 23, 2004, the employer sent an e-mail to employees informing them that the season was ending but work was available. The employer would have had work available until August 2005. On or about January 15, 2005, the claimant informed the employer she would be quitting. For two pay periods she was not scheduled for 20 hours per week and she thought she might be laid off from work. During the claimant's last week of employment she worked 29.06 hours. The following week she was scheduled for 20 hours of work.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did.

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(29) 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:

(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

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). The claimant's intention to voluntarily leave work was evidenced by her words and actions. She told the employer that she was leaving and quit work. When an employee quits work because she thinks she will be laid off even though work is available, her leaving is without good cause attributable to the employer. The claimant left work because she thought she would be laid off even though work was available. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The issue of the overpayment of unemployment insurance benefits was mistakenly left off of the notice of appeal hearing. The administrative law judge offered to hear the issue of overpayment at the time of the hearing but the claimant refused. The issue of the overpayment of unemployment insurance benefits is remanded for determination.

DECISION:

The representative's March 31, 2005 decision (reference 02) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are denied. The issue of the overpayment of unemployment insurance benefits is remanded for determination.

bas/pjs