

**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**

**MARIA R ROMERO
1505 MCDONALD ST
SIOUX CITY IA 51103**

**CURLY'S FOODS
ATTN KATHY PETERSON
PO BOX 2457
SIOUX CITY IA 51106**

**Appeal Number: 04A-UI-10457-CT
OC: 08/29/04 R: 01
Claimant: Respondent (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 Quit

STATEMENT OF THE CASE:

Curly's Foods filed an appeal from a representative's decision dated September 17, 2004, reference 01, which held that no disqualification would be imposed regarding Maria Romero's separation from employment. After due notice was issued, a hearing was held by telephone on October 21, 2004. The employer participated by Kathy Peterson, Human Resources Manager. Ms. Romero did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Romero was employed by Curly's Foods from February 13 until March 29, 2004 as a full-time laborer. She quit the employment and advised the employer that there was a family emergency in Mexico. Ms. Romero was not eligible to take a leave of absence because she was still a probationary employee. Continued employment would have been available if she had not quit. Ms. Romero reapplied for employment on September 16 and returned to work on September 23.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Romero was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Romero indicated in her fact-finding statement that she left employment because of the death of a family member in Mexico. The administrative law judge has considered whether the provisions of Iowa Code section 96.5(1)f have been satisfied.

Iowa Code Section 96.5-1-f 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:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

It was Ms. Romero's burden to establish her entitlement to benefits under section 96.5(1)f. See Iowa Code section 96.6(2). The employer had no record of her re-offering her services prior to the application of September 16, 2004. The administrative law judge appreciates that Ms. Romero had to leave employment due to a death in the family. However, the law allows for the payment of benefits only if her absence from work did not exceed a specified period of time. Ms. Romero has failed to establish that she was not away from work for more than ten working days. For this reason, she is not eligible for benefits under section 96.5(1)f.

Ms. Romero left her employment due to serious family needs or responsibilities. An individual who leaves employment under such circumstances is presumed to have voluntarily quit for no good cause attributable to the employer. See 871 IAC 24.25(23). The evidence of record does not establish any cause attributable to the employer for Ms. Romero's quit. Therefore, benefits

are denied. No overpayment results from this reversal of the prior allowance as Ms. Romero has not claimed benefits.

DECISION:

The representative's decision dated September 17, 2004, reference 01, is hereby reversed. Ms. Romero quit her employment for no good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/kjf