

**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**

**GLADYS J HUESCH  
PO BOX 1013  
DAKOTA CITY NE 68731**

**SIOUX CITY COMMUNITY  
SCHOOL DISTRICT  
ATTN: STEVE CRARY  
1221 PIERCE  
SIOUX CITY IA 51105**

**Appeal Number: 05A-UI-08116-RT  
OC: 07-24-05 R: 12  
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, 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 employer, Sioux City Community School District, filed a timely appeal from an unemployment insurance decision dated August 5, 2005, reference 01, determining that the employer would not be granted relief of charges for unemployment insurance benefits to which the claimant was entitled. After due notice was issued, a telephone hearing was held on August 25, 2005, with the claimant, Gladys J. Huesch, not participating. Lynn Walsh, Human Resources Secretary, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. At 12:44 p.m. on August 16, 2005, the administrative law judge spoke to the claimant who requested that the hearing be postponed or rescheduled. The administrative law judge denied the claimant's request because he pointed out to the claimant that the only issue before the administrative law judge would be whether the employer would be

charged for the benefits to which the claimant was entitled or receiving. The administrative law judge pointed out that this was a combined wage claim with Nebraska and Nebraska had the authority to determine the claimant's entitlement to benefits and the only issue before the administrative law judge was whether the employer would be charged for such benefits. Further, the administrative law judge noted and informed the claimant that the records showed only \$96.00 earned from the employer herein in the second quarter of 2004 and even assuming that those wages were removed from the claimant's claim she would still be entitled to benefits based on wages in her base period from other employers. Finally, the administrative law judge noted that the claimant had requalified for benefits since separating from the employer herein. The claimant chose not to participate in the hearing and the administrative law judge determined not to reschedule the hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer beginning in April 2004 as a part-time substitute food service worker working as needed on call. She was separated from her employment on October 1, 2004, which was the last time she was paid. Prior to that time the employer attempted to call the claimant several times to have the claimant work as a substitute but the employer was unable to reach the claimant on any of those occasions. The employer eventually gave up trying to reach the claimant and removed her name from the substitute list. The employer never heard from the claimant after she had last worked for the employer and last been paid on October 1, 2004. As part of the arrangements for the claimant's part-time substitute employment as needed on call, the claimant was to be available by telephone and she was not. The claimant only earned from the employer herein, \$96.00 in the second quarter of 2004 and has earnings from other employers in her base period sufficient to establish that she is otherwise monetarily eligible to receive unemployment insurance benefits even removing the wages paid from the employer herein.

The claimant has also requalified to receive unemployment insurance benefits since separating from the employer herein by earning in excess of ten times her weekly benefit amount of \$99.00 or \$990.00 from subsequent employers.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the employer should be charged for any unemployment insurance benefits to which the claimant is entitled because the claimant's separation from the employer would be disqualifying under Iowa law and therefore the employer would not be charged. The administrative law judge concludes that the employer herein should not be charged for any unemployment insurance benefits for which the claimant is entitled and the account of the employer herein should be relieved of any charges for unemployment insurance benefits paid to the claimant.

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.

The administrative law judge concludes the claimant left her employment voluntarily on or about October 1, 2004 when she was not available by telephone to take continued work part-time as a substitute food service worker on an as needed on call basis. It was part of the arrangement with the claimant that she would be available by telephone to be called for work. The claimant was not. Accordingly, the administrative law judge concludes that the claimant quit effective October 1, 2004. 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 the employer herein 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. There is no evidence of reasons attributable to the employer for the claimant's quit. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily effective October 1, 2004, without good cause attributable to the employer and would be potentially disqualified to receive unemployment insurance benefits. However, the administrative law judge notes that the claimant's claim for unemployment insurance benefits is a combined wage claim with Nebraska and the administrative law judge has no jurisdiction to determine the claimant's entitlement to benefits. The state of Nebraska is to determine that. Nevertheless, the administrative law judge notes that following the claimant's separation from the employer herein, workforce development records indicate that she has requalified to receive unemployment insurance benefits by earning in excess of ten times her weekly benefit amount of \$99.00 or \$990.00 from subsequent employers. The administrative law judge further notes that even after removing the earnings from the employer herein, the claimant would be otherwise monetarily eligible to receive unemployment insurance benefits under Iowa law. Accordingly, the administrative law judge concludes that any unemployment insurance benefits to which the claimant is entitled shall not be charged against the account of the employer herein and the account of the employer herein shall be relieved of any charges for unemployment insurance benefits which the claimant receives.

DECISION:

The representative's decision of August 5, 2005, reference 01, is reversed. The employer, Sioux City Community School District, shall be granted relief of charges for any unemployment insurance benefits to which the claimant is entitled and therefore the account of the employer shall not be charged for any benefits which the claimant receives. Since this is a combined wage claim with Nebraska, the administrative law judge reaches no conclusion as to whether the claimant is entitled to receive unemployment insurance benefits; that decision rests with Nebraska. The administrative law judge does note that under Iowa law, the claimant has requalified to receive unemployment insurance benefits following a separation from the employer herein on or about October 1, 2004 by earning more than ten times her weekly benefit amount of \$99.00 or \$990.00 from subsequent employers.

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