

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

MYRNA M BAILEY
8887 WEBB RD
VERSAILLES MO 65084

PENMAC
102B N 54TH
ELDON MO 65026

Appeal Number: 05A-UI-08023-CT
OC: 07/03/05 R: 12
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 Quit

STATEMENT OF THE CASE:

Myrna Bailey filed an appeal from a representative's decision dated July 26, 2005, reference 03, which denied benefits based on her separation from Penmac. After due notice was issued, a hearing was held by telephone on August 22, 2005. Ms. Bailey participated personally. The employer did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Bailey began working through Penmac, a temporary placement firm, on May 2, 2005, and was assigned to work full time for Dixon Ticonderoga. The assignment ended on June 23 after Ms. Bailey developed an allergic

reaction to something at work. She was then placed on an assignment with Burger's Smokehouse (Burger's). She was told at the time of placement that the work was located approximately 25 miles from her home.

Ms. Bailey began her assignment at Burger's on July 6 and determined that the mileage from her home to work was approximately 50 miles. On July 7, she contacted Penmac and asked if they had any work closer to her home but none was available. Ms. Bailey did not want to drive the 100-mile round trip because her vehicle was not reliable. On July 7 and 8, she contacted both Penmac and Burger's to report that she would be absent because of transportation issues. Burger's advised her that she would have to be replaced if she could not return to work by July 11. Because she still did not have her car fixed, Ms. Bailey contacted Penmac and Burger's on July 11 to report that she would be absent. She did not continue calling Burger's after July 11, because she had previously been told that she would be replaced if she did not return on July 11. Penmac has not offered her any further work since July 11.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Bailey was separated from employment for any disqualifying reason. She was hired for placement in temporary work assignments. An individual so employed must complete her last assignment in order to avoid the voluntary quit provisions of the law. See 871 IAC 24.26(19). Ms. Bailey did not complete her last assignment and, therefore, the separation is considered a quit. An individual who 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. Bailey stopped reporting to her assignment because she did not have transportation. An individual who leaves employment due to lack of transportation is presumed to have quit for no good cause attributable to the employer. See 871 IAC 24.25(1). However, it is a rebuttable presumption. Ms. Bailey was led to believe that the distance from her home to Burger's was approximately 25 miles. She was willing to risk driving her vehicle 25 miles or could have found someone else to take her to work if the distance was only 25 miles. However, the distance was substantially greater than what she was led to believe. The transportation issues would not have arisen but for the employer's misrepresentation of the distance to the job site. Although the misrepresentation may not have been deliberate, the fact remains that the distance stated to Ms. Bailey was substantially inaccurate.

For the reasons stated herein, the administrative law judge concludes that Ms. Bailey has successfully rebutted the presumption that her quit was without good cause attributable to the employer. Where an individual leaves work because the type of work was misrepresented, she has good cause attributable to the employer for quitting. See 871 IAC 24.26(23). The administrative law judge believes the same rationale is applicable where a material aspect of the job, such as location, has been misrepresented. For the above reasons, benefits are allowed.

DECISION:

The representative's decision dated July 26, 2005, reference 03, is hereby reversed. Ms. Bailey was separated from Penmac for no disqualifying reason. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjw