

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

DONNA L STECHER  
17262 JOHN DEERE RD APT 3  
DUBUQUE IA 52001

THE MORACCO INC  
1413 ROCKDALE RD  
DUBUQUE IA 52003

Appeal Number: 05A-UI-02456-DT  
OC: 08/08/04 R: 04  
Claimant: Respondent (1)

**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 Leaving  
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

The Moracco, Inc. (employer) appealed a representative's March 7, 2005 decision (reference 05) that concluded Donna L. Stecher (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 28, 2005. The claimant participated in the hearing. Garry Heier appeared on the employer's behalf. The record was left open through the end of the day April 1, 2005 for submission of potential exhibits on behalf of the employer and any objections from the claimant. No objection was made, and Employer's Exhibits A-1 (pay stubs) and A-2 (copies of cleared paychecks) were admitted to the record as of April 4, 2005. Notice is taken of another administrative law judge's decision issued March 1, 2005 in 05A-UI-01352-LT regarding these

same parties. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant voluntarily quit for a good cause attributable to the employer? Is the employer's account subject to charge?

**FINDINGS OF FACT:**

The claimant started working for the employer on about August 16, 2004. She worked part time as a waitress in the employer's restaurant. Her last day of work was February 4, 2005.<sup>1</sup> She voluntarily quit on or about February 7, 2005. Her reason for quitting was the employer's failure to provide her with her agreed upon hours.

The claimant had informed the employer when she was hired that she could work five nights per week, and no more than 25 hours per week due to medical restrictions. The employer had agreed to schedule her for five nights per week, five hours per night. In approximately mid-September 2004, the employer had scheduled the claimant for six nights and more than 25 hours in a week. The claimant then reminded the employer of her restrictions. During the claimant's employment with the employer, she had the following pattern of employment hours and wages:

Two week pay-period ending date	Average weekly hours for period	Hours Paid (\$3.50/hour)	Tips Reported	Total Gross Wages
08/31/04	24.37	48.75	\$414.93	\$585.56
09/14/04	17.63	35.25	\$233.27	\$356.65
09/30/04	25.00	50.00	\$369.20	\$544.20
10/16/04	12.50	25.00	\$257.19	\$344.69
10/31/04	13.12	26.24	\$210.90	\$302.78
11/15/04	11.25	22.50	\$175.00	\$253.75
11/30/04	14.00	28.00	\$193.05	\$291.05
12/15/04	14.25	28.50	\$234.00	\$333.75
12/31/04	13.88	27.75	\$248.00	\$345.13
01/16/05	11.25	22.50	\$179.00	\$257.75
01/31/05	12.50	25.00	\$179.00	\$266.50
02/15/05	NA	4.25 (from last day worked 02/04/05)	\$35.00	\$49.88 (net \$11.07)

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<sup>1</sup> Both parties had initially stated that the claimant's last day of work was January 29, 2005 and that she quit on January 31, 2005. However, the employer did indicate there was some record of the claimant working on February 4, 2005, and the employer's payroll records and cancelled checks are consistent with the finding that perhaps the parties were simply off a week, and that the claimant worked on February 4 and then quit a couple days later. While the claimant was also incorrect that the last check she received prior to her quitting was the check for a net amount of \$11.07, as that check was not issued until February 16, 2005 and cleared the employer's account on February 18, 2005. This conclusion is also consistent with the fact that the claimant reopened her claim effective the week beginning February 6, 2005, and not the week prior.

It is apparent that after the pay period ending September 30, 2004, the claimant's hours dropped nearly in half, and her gross pay also substantially decreased. The claimant sought to recover some hours, but the employer indicated that it did not wish to jeopardize the claimant's health.

On or about February 7, 2005, the claimant sought an advance on her next paycheck, but the employer declined. She then decided to quit, both because she needed to get some money that she could get by returning her uniform, and because she had given up on the likelihood that she would recover her hours and return to the 25 hour per week level.

The claimant established an unemployment insurance benefit year effective August 8, 2004. She filed weekly claims for partial unemployment insurance benefits during her claim year, but then filed an additional claim after her separation effective the week beginning February 6, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). A "contract of hire" is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a "contract of hire" to exist, nor is it pertinent that the claimant remained an "at will" employee. Even though it was not as dramatic as the claimant's claimed cut to eight hours per week, the change in the claimant's hours which had occurred a substantial change in the claimant's contract of hire. Dehmel, supra. Benefits are allowed.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code section 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code section 96.19-3. The claimant's base period began April 1, 2003 and ended March 30, 2004. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

**DECISION:**

The representative's March 7, 2005 decision (reference 05) is affirmed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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