

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JENNIFER V KUHL
Claimant

APPEAL NO. 10A-UI-00080-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BC'S TRUCK PLAZA INC
Employer

**Original Claim: 11/29/09
Claimant: Appellant (1)**

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Jennifer Kuhl, filed an appeal from a decision dated December 23, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 11, 2010. The claimant participated on her own behalf. The employer, BC's Truck Plaza, participated by Office Manager Cindy Borkowski.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Jennifer Kuhl was employed by BC's Truck Plaza from August 15, 2007 until December 5, 2009 as a full-time cook. She was supposed to work at 2:00 p.m. on November 30, 2009, but was no-call/no-show to work. Restaurant Leader Michelle Sachau called her around 2:20 p.m. and left a voice mail message asking her to either come in to work or call; but even though the claimant received the message, she did not respond. She said she woke up very upset and felt as if she were having a nervous breakdown. At no time had Ms. Kuhl ever brought any complaints or concerns to the attention of the employer.

Ms. Kuhl did intend to move out of state to Omaha, Nebraska, with her boyfriend on December 1, 2009. That did not actually occur until January 13, 2010, but she refused to continue working or notify the employer of the reason she quit. Continuing work was available to her had she worked her scheduled hours. The employer considered her a voluntary quit as of December 5, 2010.

REASONING AND CONCLUSIONS OF LAW:

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(2) and (4) provide:

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:

(2) The claimant moved to a different locality.

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant quit because she was moving out of state and was three days no-call to work. Under the provisions of the above Administrative Code sections, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of December 23, 2009, reference 01, is affirmed. Jennifer Kuhl is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw