

**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**

**SANDRA K PETERKA  
423 JORDAN DR  
ANAMOSA IA 52205-2128**

**COMMUNITY CARE INC  
108 E INDUSTRIAL ST  
DEWITT IA 52742**

**Appeal Number: 06A-UI-06242-DT  
OC: 05/21/06 R: 03  
Claimant: Appellant (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

STATEMENT OF THE CASE:

Sandra K. Peterka (claimant) appealed a representative's June 6, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Community Care, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 10, 2006. The claimant participated in the hearing. Carol Wells appeared on the employer's behalf and presented testimony from one other witness, Sandy Hansen-Heggabo. During the hearing, Employer's Exhibit One was entered into evidence. 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.

FINDINGS OF FACT:

The claimant started working for the employer on July 1, 2001. Since about February 2006, she worked part-time as a cook in the employer's residential care facility for persons with disabilities. Her last day of work was May 15, 2006. On that date she was arrested and taken to jail. She did not report for scheduled work on May 16, May 18 or May 19, 2006. On May 24, 2006, the employer drafted a letter advising her that it considered the claimant to have ended her employment by job abandonment.

The claimant was kept in custody until approximately mid-morning on May 19, when she was released on bond. The charges had not yet been resolved as of the date of the hearing. During the time she was in custody, she did not make any direct contact with the facility administrator, Ms. Hansen-Heggabo. She claimed to have made regular contact with the head cook, who was also her sister, but Ms. Hansen-Heggabo indicated that when she queried the head cook early in the week, she indicated that the claimant's status was unknown. Further, Ms. Hansen-Heggabo indicated that the head cook was not considered a "supervisor" for purposes of employee attendance communications.

The claimant asserted that she had spoken with her sister on May 18 and that she had been informed at that time that the employer was terminating her employment and, therefore, she did not seek to return to work on May 19 or thereafter. Ms. Hansen-Heggabo asserted that the only conversation she had had with the sister/head cook on May 18 was to learn that the claimant was still in jail and it was unknown when she would be released, and that she did not make a decision or make any statements indicating a decision that the claimant's employment was ended until May 24.

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.

A separation is treated as a voluntary quit where the separation occurs as a result of actions on the part of the claimant, rather than the employer. An example where an employee can be deemed to have left employment without good cause without a conscious desire to quit is where the employee is absent from work due to becoming incarcerated. 871 IAC 24.25(16). This is particularly true where, as here, the employee fails to maintain contact with the employer even if the incarceration is for a relatively short period of time. The administrative law judge finds the testimony of Ms. Hansen-Heggabo regarding the lack of contact and the substance of the communications with the sister/head cook to be more credible. Benefits are denied.

DECISION:

The representative's June 6, 2006 decision (reference 01) is affirmed. The claimant is deemed to have voluntarily left her employment without good cause attributable to the employer. As of May 19, 2006, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

ld/cs