

**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**

**SHAWN M DIGBY
612 S 16TH ST APT 24
AMES IA 50010**

**ACE INTERNATIONAL INC
BURGER KING
PO BOX 108
AMES IA 50010**

**Appeal Number: 05A-UI-01182-SWT
OC: 01/09/05 R: 02
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, 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
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 1, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 15, 2005. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Jeff Boggs participated in the hearing on behalf of the employer with a witness, Carl Sanders.

FINDINGS OF FACT:

The claimant worked for the employer as a cook/cashier from June 7, 2004 to December 27, 2004. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

The claimant was absent from work with a doctor's excuse from December 28, 2004 to January 3, 2005. On January 3, 2005, the claimant went to the restaurant and told the manager on duty that she was still sick and unable to work. The claimant was scheduled to work on January 4, 5, and 7, 2005. She was absent without notice to the employer on January 4 and 5. On January 7, the claimant came into the restaurant and picked up her paycheck. She did not report to work for her scheduled shift that day or notify the employer that she would not be at work. The claimant never reported for work or contacted the employer again after January 7, and was considered to have voluntarily quit employment.

The claimant filed for and received a total of \$525.00 in unemployment insurance benefits for the weeks between January 9 and February 12, 2005.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a. There is no evidence in the record that the employer ever discharged the claimant. Instead, the preponderance of the evidence establishes that the claimant was absent from work without notice to the employer on January 4, 5, and 7, 2005, and then never returned to work. Good cause for quitting employment has not been proven.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$525.00 in benefits for the weeks between January 9 and February 12, 2005.

DECISION:

The unemployment insurance decision dated February 1, 2005, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$525.00 in unemployment insurance benefits, which must be repaid.

saw/kjf