

**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**

**AMENDED
Appeal Number: 05A-UI-07044-RT
OC: 06-12-05 R: 02
Claimant: Respondent (2)**

**ANDREA CRAUN
500 S CHURCH
TOLEDO IA 52342**

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.

**COMMUNITY SCHOOL DISTRICT
OF SOUTH TAMA COUNTY
1702 HARDING ST
TAMA IA 52339-1028**

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 Quitting

STATEMENT OF THE CASE:

The employer, Community School District of South Tama County, filed a timely appeal from an unemployment insurance decision dated July 5, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Andrea Craun. After due notice was issued, a telephone hearing was held on July 25, 2005, with the claimant participating. John Legg, Business Manager, and Greg Darling, Middle School Principal, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time educational associate working with the middle school physical education teacher working with grades 6, 7, and 8, from August of 1996 until she separated from her employment on June 7, 2005. In early May of 2005, the claimant approached the middle school principal, Greg Darling and inquired about a leave of absence, unpaid, for sixteen weeks to allow her to do her student teaching. Mr. Darling told the claimant that he would have to get back to her. Mr. Darling consulted others and then told the claimant later in May of 2005 that the absence of 16 weeks was too long and would be too disruptive to the school and that therefore he was not going to offer her a contract for the new school year, 2005-2006. The claimant did not at that time or any other time offer to forgo student teaching and fulfill her contract. Her contract called for the claimant to work as an educational associate as she had in the prior year for the entire school year. Mr. Darling told the claimant that if she could not fulfill her contract he would not issue a new contract and he did not do so. He wrote the claimant a letter to this effect. The claimant never expressed any concerns to the employer about her working conditions nor did she ever indicate or announce an intention to quit if any of her concerns were not addressed.

Two teaching associates in the high school, one a librarian and one an associate working with special needs children did obtain leaves of absence for student teaching. However, they were in the high school and had a limited number of contacts with students. The claimant's position involved contacts with 250 students in the middle school, grades 6, 7, and 8, rather than high school students. The claimant would be off from work student teaching for 16 weeks from August 22, 2005 to December 9, 2005. This would be almost an entire semester. If the claimant could have fulfilled her contract for the 2005-2006 school year she would have been offered a contract.

Pursuant to her claim for unemployment insurance benefits filed effective June 12, 2005, the claimant has received unemployment insurance benefits in the amount of \$1,944.00 as follows: \$324.00 per week for six weeks from benefit week ending June 18, 2005 to benefit week ending July 23, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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(1)(26) provides:

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:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

(26) The claimant left to go to school.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant voluntarily quit when she was unable to fulfill her contract for the ensuing or new school year, 2005-2006, as an educational associate working with the middle school physical education teacher for grades 6 through 8, because she was going to be off work for 16 weeks student teaching. The claimant maintains that she was discharged when she was not given such a contract. However, the claimant concedes that she would not have been able to fulfill her contract because she did require being off work for 16 weeks student teaching; from August 22, 2005 to December 9, 2005. The claimant further testified that she at no time offered to fulfill her contract because she could not because of the student teaching requirement. The claimant did ask for an unpaid leave of absence for 16 weeks, but the employer determined that that was too long and too disruptive to the school and in view of the large number of student contacts, 250, the employer could not allow the claimant to have such a leave of absence. Because the claimant was not going to be able to fulfill her contract, no contract was offered to the claimant. The employer's witnesses credibly testified that if the claimant had been able to fulfill her contract one would have been given to her. Under the circumstances here, the administrative law judge must conclude that the claimant, in effect, voluntarily left her employment on June 7, 2005, the end of the 2004-2005 school year. It is uncontroverted that the claimant was not going to be able to fulfill her contract for the new school year, 2006-2006 because she was going to be off work for 16 weeks for student teaching. The student teaching and the claimant's absences were not a decision at all by the employer, but rather one by the claimant. The claimant chose to be off work for that period of time and did not indicate otherwise to the employer. If the claimant had been able to fulfill her contract she would have been offered one. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily effective June 7, 2005. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has a burden to prove she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The only reason the claimant left her employment was to complete her student teaching requirement, which required 16 weeks of absences. The claimant was in effect going to school. Leaving work voluntarily to go to school is not good cause attributable to the employer. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. There is also no evidence that the claimant ever expressed any concerns to the employer about her working conditions or that she ever indicated or announced an intention to quit if any of her

concerns were not addressed by the employer. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily effective June 7, 2005, without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

The claimant argued that two other teachers were given leaves of absence. However, the claimant was unable to establish that these two other employees were similarly situated to the claimant. Both of the other employees were associates in the high school. One was a librarian and one was an associate for special needs children. Their contact with students was reduced in number from that of the claimant's. The employer made a decision that releasing those two associates would not have the same detrimental effect on the school, as would the claimant. The administrative law judge does not believe that the associates are all comparable and therefore does not believe that the employer treated the claimant differently in substance than the employer treated the other associates.

The administrative law judge notes that the claimant is going to be student teaching from August 22, 2005 to December 9, 2005. There is a real issue as to whether the claimant is going to be able, available, and earnestly and actively seeking work during that period of time. However, whether the claimant is or would be ineligible to receive unemployment insurance benefits because she was or will be, at relevant times, able, available, earnestly and actively seeking work was not set out on the notice of appeal and the administrative law judge does not have jurisdiction and now to determine that issue. The administrative law judge also notes that the claimant has not yet started her student teaching. The administrative law judge concludes that it is not now necessary to remand this matter for an investigation and determination as to whether the claimant would be ineligible to receive unemployment insurance benefits because she was not able, available, earnestly and actively seeking work under Iowa Code section 96.4-3 because, as set out above, the administrative law judge concluded that the claimant is disqualified to receive unemployment insurance benefits. However, if that decision is overturned, this matter must be remanded to claims when the claimant begins her student teaching to determine whether the claimant is ineligible to receive unemployment insurance benefits because at relevant times she was not able, available, and earnestly and actively seeking work.

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.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,944.00 since separating from the employer herein on or about June 7, 2005 and filing for such benefits effective June 12, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of July 5, 2005, reference 01, is reversed. The claimant, Andrea Craun, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer. She has been overpaid unemployment insurance benefits in the amount of \$1,944.00.

dj/kjw/pjs