

**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**

**Appeal Number: 05A-UCFE-00029-DT
OC: 07/24/05 R: 02
Claimant: Respondent (5)**

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.

**SHAMIRAH M GIBBS
D-29
3560 E DOUGLAS
DES MOINES IA 50317**

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.

**US POSTAL SERVICE
STATE COORDINATOR
PO BOX 189994
DES MOINES IA 50318**

**SENIOR PLANT MANAGER
US POSTAL SERVICE
1165 – 2ND AVE
DES MOINES IA 50318-9997**

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

United States Postal Service (employer) appealed a representative's August 23, 2005 decision (reference 01) that concluded Shamirah M. Gibbs (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 September 14, 2005. The claimant participated in the hearing. Michael Dickerson appeared on the employer's behalf. 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 or about November 26, 2004. She worked full time as a temporary mail handler in the employer's Des Moines, Iowa office. She normally worked Monday through Saturday, 6:00 a.m. to 6:00 p.m. Her last day of work was May 11, 2005. She quit effective that date because she had injured her back at home and had been advised by her doctor to stay off work, and she did not have any sick leave. The employer advised her that if she quit rather than be discharged for absenteeism, that she would be eligible for rehire.

On May 23, 2005, the claimant presented herself and a letter to the employer indicating that she was ready to return to work. She made her contact with one of the employer's human resources representative, as she had received a letter from that person inquiring about a prior criminal record. The human resources person indicated that the claimant could not yet return to work, that she needed to review the claimant's explanation of the prior record. The claimant had fully disclosed the prior record on her job application. On June 3, the employer sent the claimant a letter informing her that she would not be allowed to return to work, as it did not find the claimant's explanation regarding the prior record to be satisfactory.

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-d, f 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

871 IAC 24.25 provides that, 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 claimant did express her intent not to return to work with the employer for such time as she was injured and unable to work. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2.

A voluntary quit can be for good cause attributable to the employer even if the employer is free from any negligence or wrongdoing. Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956); Shontz v. IESC, 248 N.W.2d 88 (Iowa 1976). Under the statute and rule, the claimant's original voluntary quit was for good personal cause under these provisions. However, the claimant must also demonstrate that she returned to work, but no work was available. She has satisfied this burden. Further, she was not off for more than ten working days. Benefits are denied until or unless the claimant satisfies this requirement of the statute and rule.

To the extent the employer's refusal to allow the claimant to return to work can be characterized as a discharge, it was not for a current act of misconduct as necessary for disqualification. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The incident in question occurred years prior to the employer's effective discharge of the claimant, and the employer was on notice at least six months prior to the effective discharge.

DECISION:

The representative's August 23, 2005 decision (reference 01) is modified with no effect on the parties. The claimant voluntarily left her employment due to personal illness and compelling personal reasons for less than ten days, and did offer to return to work, but no work was available or extended. Benefits are allowed, if the claimant is otherwise eligible.

ld/kjw