

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

FREEDOM BURKETT
3701 2ND ST LOT #301
CORALVILLE IA 52241

THE UNIVERSITY OF IOWA
C/o DAVE BERGEON
121 R UNIVERSITY SERVICES BLDG
IOWA CITY IA 52242

Appeal Number: 04A-UI-07097-B
OC: 05/23/04 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, 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

STATEMENT OF THE CASE:

Freedom Burkett (claimant) appealed an unemployment insurance decision dated June 18, 2004, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with The University of Iowa (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Cedar Rapids, Iowa on October 6, 2004. The claimant participated in the hearing with husband Brian Burkett. The employer participated through David Bergeon, Human Resources Specialist and David Ambrisco, Personnel Administrator for the Division of Facilities Services. Employer's Exhibits One through Three and Claimant's Exhibits A through E were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time housekeeper/custodian from January 4, 2001 through June 8, 2004. She was considered to have voluntarily quit her employment when she failed to return to work after an approved leave of absence for a non-work-related injury. The claimant's last day of work was March 18, 2004 and she was off work on the Family Medical Leave Act (FMLA). She was scheduled to return to work on May 9, 2004. The claimant reported she was not medically able to return to work and was given new FMLA papers on May 14, 2004, which were to be returned by May 29, 2004.

The employer tentatively placed her on time off under the FMLA. The claimant's last contact with the employer was on May 20, 2004 and the employer did not hear from her after that date. The claimant did not provide updated FMLA papers. The employer telephoned the claimant numerous times but did not reach her and no calls were returned to the employer. The employer sent the claimant a certified, return receipt requested letter on June 2, 2004, which advised her of her status. The employer gave the claimant until June 7, 2004 to either contact her supervisor or the Personnel Administrator and/or to provide medical verification for her absences. If the claimant failed to take any action, the employer would conclude the claimant quit her employment. The claimant did not contact the employer. Her husband admitted they were not picking up their certified mail as they believed it was from bill collectors. The employer sent the claimant another certified letter on June 8, 2004, which advised her to return the employer's property since she had abandoned her position.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

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 voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated her intent to quit and acted to carry it out when she failed to contact the employer and return to work after her previous leave of absence expired. She contends she provided updated FMLA papers to the employer but the employer has no such papers. The claimant admitted that if there were a problem with her leave, she would expect the employer to contact her. The employer made several attempts to reach the claimant but was unsuccessful. It is the claimant's burden to prove that the voluntary quit was for a good reason that would not disqualify her. Iowa Code Section 96.6-2. The claimant quit her employment but provided no evidence establishing good cause attributable to the employer. Benefits are properly denied.

DECISION:

The unemployment insurance decision dated June 18, 2004, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

sdb/kjf