

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

ANNA M FULNER
310 PEAR ST
SHENANDOAH IA 51061

C & K ENTERPRISES INC
PIZZA HUT OF AUDUBON & SHENANDOAH
940 N 28TH AVE
BLAIR NE 68008

Appeal Number: 04A-UI-11153-SWT
OC: 09/12/04 R: 01
Claimant: Appellant (4-R)

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 96.4-3 - Able to and Available for Work
871 IAC 24.27 - Voluntary Quit of Part-time Job

STATEMENT OF THE CASE:

The claimant, Anna Fulner, appealed an unemployment insurance decision dated October 11, 2004, reference 01, that concluded she was not able to work. A telephone hearing was held on November 9, 2004. The parties were properly notified about the hearing. Fulner participated in the hearing. Troy Hartvigsen participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Fulner worked part time as a delivery driver for the employer about 20 hours per week from August 22, 2002, to April 11, 2004. It was a job to supplement her full-time job as a home health care worker with Family Touch Home Health Care.

Fulner developed a problem with seizures in April 2004. She was unable to drive because of her medical condition. She had decided to quit her part-time job, but the store manager convinced her to take a medical leave instead.

Fulner was laid off from her job with Family Touch Home Health Care on September 14, 2004. Her medical condition did not affect her ability to perform her full-time job.

Fulner filed a new claim for unemployment insurance benefits with an effective date of September 12, 2004. Her weekly benefit amount was determined to be \$278.00 based on having zero dependents and having wages in the third quarter 2003 of \$5,640.00 from Family Touch Home Health Care and \$767.00 from employer. If the wages from the employer are excluded, her high quarter of wages would be the first quarter of 2004, in which she was paid \$5,645.00.

She still is not released to drive and has no intention to return to work for the employer. Although she is considered by the employer to still be on a leave of absence, she has actually quit her part-time job.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether Fulner voluntarily quit employment without 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.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

Fulner desired to quit her job because of her inability to drive. She was convinced to take a leave of absence, but does not intend to return to work for the employer. She voluntarily quit employment without good cause attributable to the employer. The job, however, was part time,

and Fulner has sufficient wages from other employers to qualify to receive unemployment insurance benefits. Pursuant to the rule, the employer's account will not be subject to charge for benefits paid to Fulner.

The next issue in this case is whether Fulner was able to work, available for work, and earnestly and actively seeking work as defined by the unemployment insurance law in Iowa Code section 96.4-3. The rules interpreting this statute provide that a claimant should be considered able to and available for work as long as she is physically and mentally able to work in some gainful employment, not necessarily the individual's usual occupation, but work engaged in by others as a means of livelihood. 871 IAC 24.22(1). The evidence establishes that Fulner is and was able to work in her usual occupation. The fact that she cannot work as a delivery driver does not make her unable to work.

Under Iowa Code section 96.3-4, Fulner's weekly benefit amount would be \$245.00 (\$5,645.00 divided by 23) and her maximum benefit amount would be \$6,370.00 (\$245.00 times 26), after the wages from the employer are excluded. This matter is remanded to the Agency to make a formal monetary eligibility redetermination.

DECISION:

The unemployment insurance decision dated October 11, 2004, reference 01, is modified in favor of Anna Fulner. Fulner is qualified to receive unemployment insurance benefits, provided she is otherwise eligible. The employer's account will be exempt from charge for benefits paid to Fulner. This matter is remanded to the Agency to make a formal monetary eligibility redetermination.

saw/tjc