

**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**

**STEFANIE L JONES
309 N IOWA AVE
OTTUMWA IA 52501**

**OTTUMWA COMMUNITY
SCHOOL DISTRICT
ATTN HUMAN RESOURCES DEPT
422 MCCARROLL
OTTUMWA IA 52501**

**Appeal Number: 05A-UI-06540-RT
OC: 05-29-05 R: 03
Claimant: Appellant (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 Quitting
Section 96.4-3 – Required Findings (Able and Available for Work)
Section 96.7-2-a-2 – Employer Contributions and Reimbursements
(Same Employment-Benefits Not Charged)

STATEMENT OF THE CASE:

The claimant, Stefanie L. Jones, filed a timely appeal from an unemployment insurance decision dated June 20, 2005, reference 02, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on July 27, 2005, with the claimant participating. Janine Cooney, Administrative Assistant for Human Resources, participated in the hearing for the employer, Ottumwa Community School District. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

An initial hearing was scheduled in this matter on July 11, 2005, at 3:00 p.m. and rescheduled by the administrative law judge. Although not set out on the notice of appeal of telephone hearing, the parties permitted the administrative law judge to take evidence on and decide, if necessary, whether the claimant, Ms. Jones, would be disqualified to receive unemployment insurance benefits because of a potentially disqualifying separation from the employer, either as a voluntary quit or a discharge for misconduct. The parties waived further notice of this issue.

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 part-time Prime-Time Youth Care Program Worker from May of 2001 until she voluntarily quit effective February 18, 2005. The claimant was a regularly scheduled employee of the employer as a part-time Prime-Time Youth Care Program Worker until February 18, 2005. On February 4, 2005, the claimant informed her supervisor that she was leaving her employment and giving a two-week notice so that she could accept additional employment from P & D Enterprises, doing business as Uncle Buck's. The claimant had been working part time for this employer previously but was offered more hours in February of 2005 and accepted those, and therefore had to quit her regularly scheduled part time work with the employer. When the claimant submitted her resignation on February 4, 2005, to be effective February 18, 2005, the claimant's supervisor, Tammy Thompson, asked the claimant to remain on the employer's on-call substitute list for substitute prime-time youth care program workers. The claimant consented, but the claimant has never been called to act as such a substitute and the claimant has not had earnings from the employer since February of 2005. The claimant separated from her employment with P & D Enterprises, doing business as Uncle Buck's, on May 27, 2005, which separation was not disqualifying pursuant to a decision by an authorized representative of Iowa Workforce Development dated June 13, 2005, which decision has not been appealed by the employer. The part-time position as Prime-Time Youth Care Program Worker was a year-round program including the summers. There was, or would be, no temporary unemployment or period of time off work for the summer break between academic years or terms.

The claimant has placed no physical restrictions on her work or training restrictions which would concern her ability to work. The claimant has placed no restrictions on times or days when she could or could not work or other restrictions involving her availability for work. The claimant is earnestly and actively seeking work by making two in-person job contacts each week.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because she is and was at relevant times not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for this reason.
3. Whether the claimant is receiving the same employment from the employer as she did in her base period and therefore the employer should not be charged for any unemployment insurance benefits to which the claimant is entitled. This issue is not relevant, and the administrative law judge concludes that this issue does have to be resolved because, as noted

below, the administrative law judge concludes that the employer should not be charged for any unemployment insurance benefits to which the claimant may be entitled because of the claimant's permanent separation from the employer.

Iowa Code section 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant effectively voluntarily left her employment with the employer herein on February 18, 2005. Prior to that time the claimant was a regularly scheduled part-time Prime-Time Youth Care Program Worker. She gave the employer a two-week notice of separation from that employment on February 4, 2005. It is true that the employer talked the claimant into remaining as a on-call substitute part-time Prime Time Youth Care Program Worker, but the claimant was never called and never performed any services for the employer after February 18, 2005, and never received any pay for work after that date. Accordingly, the administrative law judge concludes that the claimant left her employment with the employer herein effective February 18, 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 the burden to prove that 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 claimant testified credibly that the only reason she left her employment with the employer herein was to work additional hours for a prior part-time employer, P & D Enterprises, doing business as Uncle Buck's. The claimant had been working part time for that employer but was offered more hours and accepted them. This is not good cause attributable to the employer. Accordingly, the administrative law judge concludes that the claimant voluntarily left her employment effective February 18, 2005, without good cause attributable to the employer and, as a consequence, her separation, or voluntary quit, is potentially disqualifying. However, the evidence establishes that the claimant left her employment in good faith for the sole purpose of accepting other, or better, or additional employment, which she did accept and for which she performed services. In this situation the claimant is not disqualified to receive unemployment insurance benefits, but any unemployment insurance benefits relating to wage credits earned with the employer herein shall be charged to the Unemployment Compensation Fund and not charged to the account of the employer herein. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible, but any unemployment insurance benefits to which the claimant is entitled relating to wage credits earned with the employer herein shall be

charged to the Unemployment Compensation Fund and not charged to the account of the employer herein.

The administrative law judge notes that the employment herein, although part time, was year-round and therefore the between terms disqualification when working for an educational institution pursuant to Iowa Code section 96.4(5) is not applicable here.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant has the burden of proof to show that she is able, available, and earnestly and actively seeking work under Iowa Code section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that, at relevant times, she is and was able, available, and earnestly and actively seeking work. The claimant credibly testified that she has placed no physical restrictions or training restrictions on her ability to work and that she has placed no restrictions on her days or hours when she could or could not work concerning her availability for work. The claimant also credibly testified that she is earnestly and actively seeking work by making two in-person job contacts each week. There is no evidence to the contrary. Accordingly, the administrative law judge concludes that the claimant is able, available, and earnestly and actively seeking work and, as a consequence, she is not ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided she remains able, available, and earnestly and actively seeking work and is otherwise entitled to such benefits.

The administrative law judge concludes that it is not now necessary to determine whether the claimant is in the employ of a base period employer at the time she is receiving benefits and is receiving the same employment as she did in her base period and therefore the employer would not be charged under Iowa Code section 96.7(2)(a)(2). First, the administrative law judge concludes that the claimant is not now in the employ of a base period employer while receiving benefits, because she separated on February 18, 2005, from this employer and separated from her other employer on or about May 27, 2005. Second, the administrative law judge has already determined that the employer herein shall not be charged for any unemployment insurance benefits to which the claimant is entitled.

DECISION:

The representative's decision of June 20, 2005, reference 02, is reversed. The claimant, Stefanie L. Jones, is entitled to receive unemployment insurance benefits, provided she is

otherwise eligible, because, although she left her employment herein voluntarily without good cause attributable to the employer, she did so in good faith for the sole purpose of accepting other or better employment, which she did accept and for which she performed services. However, any unemployment insurance benefits to which the claimant is entitled relating to wage credits earned with the employer herein shall be charged to the Unemployment Compensation Fund and not charged to the account of the employer herein. The claimant is able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits for that reason.

kjw/kjw