

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

JAYME L BURNS

Claimant,

and

CBC INC

Employer.

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HEARING NUMBER: 10B-UI-09495

**EMPLOYMENT APPEAL BOARD
DECISION**

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1, 24.26-21

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Jayme L. Burns, was employed by Cleaning Authority from November, 10, 2008 through May 28, 2010 as a full-time residential house cleaner. (Tr. 2-3, 5) She worked in teams of two generally and her day ended approximately between 4:30 p.m. and 5:00 p.m.(Tr. 6) There was no set ending time, as if her crew completed a job, then she would assist another team. (Tr. 6, 14-15, 21) It was not unusual for Ms. Burns to end her workday between 5:00 p.m. or 5:30 p.m. (Tr. 8) On Fridays, because she had only four houses to clean, she usually finished up by 4:00 p.m. (Tr. 19, 21)

Ms. Burns became the team leader of her cleaning crew (Tr. 6, 17) whose responsibilities included making sure keys to clients' homes were returned at the end of the day. (Tr. 18) On Friday, May 28th, the claimant returned to the office around 4: 00 p.m., (Tr. 7) with the work binder that contained the client's documents and house keys. This time, the house keys were missing. (Tr. 4, 13) When the

employer questioned the claimant and her partner about the missing keys, both women checked their pockets and returned to Ms. Burns' vehicle to look for them. (Tr. 4) The claimant realized that she stuck them in the deadbolt when her partner, Ann, locked the door from the inside on the doorknob. (Tr. 4, 12, 14)

The employer asked them to go back and retrieve the keys because it was her responsibility as team leader to bring back all keys to clients' home that they clean. (Tr. 4, 14) Ann could not return on her own because she was not the driver that day. (Tr. 4) The claimant refused citing that she had to pick up her children from daycare, and didn't want to be late to her evening job that started at 6:00 p.m. (Tr. 5, 14, 19) The employer told her to either go back to the house to retrieve the keys or "...you'll be giving up your job..." (Tr. 5) The claimant chose to quit and requested her check. (Tr. 5)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) (2009) provides:

An individual shall be disqualified for benefits: *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 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...

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

871 IAC 24.25(27) provides:

The claimant left rather than perform the assigned work instructed.

The claimant acknowledged there was no guaranteed time for the end of her workday. (Tr. 19-21) In fact, the record shows that when Ms. Burns and her crew did complete their houses, they either returned to the office for further assignment or helped out another crew. (Tr. 6, 14-15, 21) Ms. Burns also admitted leaving the keys in the deadbolt of the client's home on May 28th. (Tr. 14) As team leader, she had a heightened duty to retain custody of the client's house keys and to return them to the employer after each shift. She did not deny this responsibility; rather she tried to deflect it onto her partner as well. Her failure to return to the office with keys in tact not only was a bad reflection on the employer, but on her professionalism as well.

It was not unreasonable for the employer to direct and expect her to go back for the client's keys in light of their employment relationship and the nature of her position. The claimant's refusal, citing her need to pick up kids from daycare and get ready for her second job hold little merit in light of the employer's offer to accommodate her by allowing her to go pick up her children and return for the keys. Ms. Burns failure to comply with the employer's reasonable directive was her choice.

871 IAC 24.1(113)"b" provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

Based on this record, we conclude that the claimant initiated her own separation, which was a disqualifying event.

DECISION:

The administrative law judge's decision dated August 20, 2010 is **REVERSED**. The claimant voluntarily quit without good cause attributable to the employer. Accordingly, she is denied benefits until such time she has worked in and was paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(1)"g".

Monique F. Kuester

Elizabeth L. Seiser

CONCURRING OPINION OF MONIQUE F. KUESTER:

I agree with my fellow board member that the administrative law judge's decision should be reversed; however, I would comment that the overtime issue asserted by the claimant's attorney has no relevance to the merits of this unemployment insurance case.

Monique F. Kuester

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge with the following comment:

The case is somewhat similar to *Pierce v. Iowa Dept. of Job Service*, 425 N.W.2d 679 (Iowa App. 1988) where an employer gave short notice of overtime. Like the claimant in *Pierce*, this claimant had no realistic opportunity to make other arrangements. Thus, her inability to work on such short notice lacked any intent to disregard the employer's interests. I would conclude that misconduct was not established.

John A. Peno

The employer has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED**.

Lastly, Iowa Code section 96.6(2) (2009) provides, in pertinent part:

...If an administrative law judge affirms a decision of the representative, or the Appeal Board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5....

Although this decision disqualifies the claimant for receiving benefits, those benefits already received shall *not* result in an overpayment. Nor will the employer's account be charged.

John A. Peno

Monique F. Kuester

Elizabeth L. Seiser