

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

WENDY S CRENSHAW
721 N 7TH ST
KEOKUK IA 52632

BECK OIL CO OF ILLINOIS
BECK OIL CO
850 E THOMPSON ST
PRINCETON IL 61356-0060

Appeal Number: 06A-UI-03306-JTT
OC: 02/05/06 R: 04
Claimant: Appellant (2R)

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:

Claimant Wendy Crenshaw filed a timely appeal from the March 9, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 10, 2006. Claimant participated. Manager Julie Niggemeyer represented the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Wendy Crenshaw was employed by Beck Oil Company as a part-time convenience store clerk from July 19, 2002 until March 11, 2006, when she quit. Prior to January 24, 2006, Ms. Crenshaw had averaged 28-32 hours per week. On January 24, Ms. Crenshaw notified Store Manager Julie Niggemeyer that she had obtained a second job with better pay and better working hours and would need to limit her hours at the convenience store to weekends. At that point,

Ms. Crenshaw was still on the schedule for the week ending January 28. Ms. Crenshaw notified Ms. Niggemeyer that she wished to keep her employment with Beck Oil Company in case the new job did not work out. Ms. Niggemeyer advised Ms. Crenshaw that she was unable to hold open the previous number of hours Ms. Crenshaw had worked while Ms. Crenshaw determined whether the new job would work out and would need to hire someone to cover the hours Mr. Crenshaw was no longer available to work. At this point, the posted schedule ended on January 28 and Ms. Crenshaw continued to appear and work her scheduled shifts. Ms. Crenshaw appeared and worked her shift at the convenience store on January 25.

On January 26, Ms. Crenshaw worked her first shift at her new job and quickly realized it was not going to work out. Ms. Crenshaw immediately quit that employment.

On January 27, Ms. Crenshaw contacted Ms. Niggemeyer and asked whether Ms. Niggemeyer had hired anyone to cover Ms. Crenshaw's previous hours. Ms. Niggemeyer said she had not. Ms. Niggemeyer told Ms. Crenshaw that the schedule for the following week was already completed, but not yet posted, and that Ms. Crenshaw would be given hours on that schedule. The schedule for the following week ended on Saturday, February 4. Ms. Crenshaw assumed that she would be returned to her previous number of hours after the following week's schedule. On January 28, Ms. Crenshaw appeared and worked her final scheduled shift pursuant to the previous week's posted schedule. Ms. Crenshaw was then not scheduled to work on January 29- 30. On January 31 and February 1, Ms. Crenshaw worked a 1:00-9:00 p.m. shift at the convenience store. On February 3, Ms. Crenshaw worked an 8:00 a.m. to 4:00 p.m. shift at the convenience store.

On February 3, Ms. Crenshaw saw the schedule posted for the following week and observed that she had only been given 13.5 hours. Ms. Crenshaw called Ms. Niggemeyer at home and asked why her hours had been cut. Ms. Niggemeyer told Ms. Crenshaw her hours had been cut because she had been observed smoking out in front of the convenience store. Ms. Niggemeyer was aware that Ms. Crenshaw was required to work at least 28 hours per week to be eligible for subsidized day care and/or food stamps. Ms. Niggemeyer subsequently indicated that she had hired a new employee and would not be returning Ms. Crenshaw to her previous number of hours.

Ms. Crenshaw established the claim for benefits that was effective February 5, 2006.

On March 11, Ms. Crenshaw notified the employer that she was quitting the employment and had commenced employment through a temporary employment agency.

REASONING AND CONCLUSIONS OF LAW:

The first question for the administrative law judge is whether Ms. Crenshaw can be deemed to have been partially unemployed during the period when her hours at the convenience store were reduced prior to her separation from the employment.

An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates that the individual is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing that she meets the above requirements. 871 IAC 24.22. The above requirements are waived if the evidence indicates that the individual is *partially unemployed*, while employed at the individual's regular job. Iowa Code section 96.4(3). Where a claimant is

still employed in a part-time job at the same hours and wages as contemplated in the original contract of hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed. 871 IAC 24.23(26).

The evidence indicates that on January 24, Ms. Crenshaw requested that her hours of employment at the convenience store be limited to weekend hours while she tried out the new employment. Ms. Crenshaw, never requested a reduction in hours. The evidence indicates that Ms. Crenshaw never in fact worked under such a schedule that limited her working hours to weekends. The evidence indicates that within three days, Ms. Crenshaw notified Ms. Niggemeyer that she did not need to change her availability after all. The new schedule had not yet been posted and a replacement for Ms. Crenshaw's hours had not yet been hired. Nonetheless, the employer reduced Ms. Crenshaw's hours of employment by more than half, refused to continue her at her previous number of hours, and hired new help. The evidence indicates that Ms. Crenshaw was available to work her previous number of hours and had a strong incentive to continue to work at least 28 hours per week.

Based on the evidence in the record, the administrative law judge concludes that Ms. Crenshaw was partially unemployed for the period of January 29, 2006, through her quit date of March 11, 2006, and would be eligible for benefits during that period, provided she is otherwise eligible.

The evidence presented at the hearing raises the issue of whether Ms. Crenshaw's quit on March 11, 2006, was for good cause attributable to the employer. Issues related to Ms. Crenshaw's separation from the employment were not before the administrative law judge and will need to be addressed on remand.

DECISION:

The Agency representative's decision dated March 9, 2006, reference 01, is reversed. Effective, January 29, 2006, the claimant was no longer working the same hours and was partially-unemployed. The claimant continued to be partially unemployed until her quit date of March 11, 2006. The claimant is eligible for benefits for the period of February 29 through March 11, provided she is otherwise eligible. The employer's account may be charged.

REMAND:

This matter is remanded so that the claims representative can address whether the claimant's quit was for good cause attributable to the employer.

jt/kkf