

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

PAMELA J SCHWABE
213 DEARDORFF AVE
PERU IA 50222

HARDEES FOOD SYSTEMS INC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-09591-SWT
OC: 02/01/04 R: 02
Claimant: Respondent (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:

The employer appealed an unemployment insurance decision dated August 24, 2004, reference 03, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on September 29, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Lisa Hendricks participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked part-time for the employer as a restaurant worker from May 18 to July 11, 2004. Mary Kay Chambers was initially the claimant's supervisor and the person who hired the claimant. The claimant told Chambers that she could only take the job if she was scheduled for at least 25 hours per week because of the 26-mile commute required by the job. Chambers agreed to this condition. The claimant also agreed to try working as a cook but told Chambers

that she might not be able to tolerate the heat in the kitchen. She told Chambers that she was willing to do any of the other jobs in the restaurant.

After a couple of days of work, the claimant determined that she could not tolerate the heat in the cooking job and informed Chambers about that. Chambers put the claimant on the schedule to fill in for the person who was making biscuits and doing the prep work in the morning. The fill-in job did not provide the claimant with at least 25 per week. She told Chambers that she would have to have more hours to continue to work. The employer did not supply the claimant with more hours, so the claimant informed the employer that she was quitting employment due to the lack of hours. The claimant continued to work at the request of the employer to fill in for the person who normally made the biscuits and did the prep work.

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 1, 2004, and filed an additional claim for benefits effective August 1, 2004, after her employment with the employer ended. The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant 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 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The claimant quit employment due to a substantial reduction in her hours of work from what was agreed on when she was hired. She notified the employer that she needed more hours to continue to work for the employer, but nothing was done to resolve the claimant's complaint about her hours. She quit with good cause attributable to the employer.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated August 24, 2004, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjf