

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LACRISHA M FRANKLIN
Claimant

APPEAL NO. 07A-UI-01536-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TACO JOHN'S OF IOWA
Employer

OC: 01/07/07 R: 02
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Lacrisha Franklin (claimant) appealed a representative's January 31, 2007 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Taco John's of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 27, 2007. The claimant participated personally. The employer participated by Mike Lee, Vice President of Operations.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 15, 2004, as a part-time hourly employee. The claimant signed for receipt of the company handbook on July 15, 2004. The handbook prohibits facial jewelry. The claimant understood the employer's rule but had her lower lip pierced in November 2006. The person who performed the piercing told the claimant that the ring could not be removed for two months. The employer saw the claimant wearing the chin ring in late November 2006 and told her to remove the item. The claimant did not do so. The employer again saw the claimant wearing the ring in December 2006. He told the claimant to remove the ring but the claimant did not do so.

On January 2, 2007, the employer again saw the claimant wearing the chin ring and told her supervisor to have the claimant remove the jewelry. The supervisor told the claimant she could not work until she removed the item. The claimant left the premises and did not call for five days. The employer assumed the claimant quit work. After five days the claimant asked the employer if she could have more time off to heal. The employer told the claimant she had over

60 days to heal and the claimant was considered to have quit work when she walked off the job on January 2, 2007. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work 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 24.25(27) 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. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(27) The claimant left rather than perform the assigned work as instructed.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her actions. She walked off and quit work. When an employee quits work rather than perform the assigned work, her leaving is without good cause attributable to the employer. The claimant left work rather than perform the job assigned by the employer to remove her facial jewelry. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's January 31, 2007 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until

she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css