

**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**

**TERESA CALIGIURI
3305 EP TRUE PKWY UNIT 1603
WEST DES MOINES IA 50265**

**MILLENNIUM CUSTOM FOODS INC
100 LEXINGTON DR STE 205
BUFFALO GROVE IL 60089**

**ATTORNEY GRETCHEN JENSEN
1501 – 42ND ST STE 300
WEST DES MOINES IA 50266**

**Appeal Number: 05A-UI-06351-BT
OC: 05/22/05 R: 02
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 Quit

STATEMENT OF THE CASE:

Teresa Caligiuri (claimant) appealed an unemployment insurance decision dated June 13, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Millennium Custom Foods (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 27, 2005. The claimant participated in the hearing with Attorney Gretchen Jensen. The employer participated through Richard Letizia, President; Brenda Perkovich, Vice-President; and Debra Guttman, Office Manager.

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 employed as a full-time sales representative from September 13, 2000 through May 30, 2005. She voluntarily quit her employment due to the employer's failure to pay her wages. The employer advised the claimant she would not be receiving her May 13 paycheck and reported that she would get paid whenever the employer got financing. The employer already owed the claimant approximately \$57,000.00 in back expenses and bonuses. The claimant sent a demand letter to the employer but resigned before its due date since the employer did not have any funds with which to pay its employees.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

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.

The claimant quit her employment due to the employer's inability to pay her wages, expenses and bonuses. In the absence of an agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving the employment. Deshler Broom Factory v. Kinney, 2 N.W.2d 332 (Nebraska 1942). The employer contends the claimant agreed to forego her wages based on the claimant's silence when advised she would not receive her May 13, 2005 paycheck. However, this is inadequate to demonstrate there was an actual agreement between the parties since it would not be atypical for an employee to initially remain silent under the same circumstances. The claimant's demand letter was sufficient notice to advise the employer she would not continue working without a paycheck. Under these circumstances, the administrative law judge concludes the claimant has demonstrated her leaving was for good cause attributable to the employer. Benefits are allowed.

DECISION:

The unemployment insurance decision dated June 13, 2005, reference 01, is reversed. The claimant voluntarily quit her employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits provided she is otherwise eligible.

sdb/kjw