

**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**

**BRANDY JOHNSON
1258 – 330TH AVE
WOODBURN IA 50275**

**BRADFORD CHILD CARE SERVICES
APPLE TREE CHILDREN'S CENTER
2281 MCKEES ROCKS RD
MCKEES ROCK PA 15136**

**Appeal Number: 05A-UI-08156-B
OC: 07/10/05 R: 02
Claimant: Appellant (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:

Brandy Johnson (claimant) appealed an unemployment insurance decision dated August 2, 2005, reference 03, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Apple Tree Children's Center (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa, on August 31, 2005. The claimant participated in the hearing with her husband in attendance. The employer participated through Jill Smith, Director; Leann Andre, Regional Manager; and Tammy Lathrop, Lead Teacher-Infant. Employer's Exhibit One was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time toddler teacher from April 1, 2001 through June 22, 2005. She was on a leave of absence and was scheduled to return to work on June 27, 2005. The claimant went to the facility on June 22, 2005 and asked the director where she would be working. The director stated that she might have to work from center to center. The claimant was upset as she said she had no transportation, but the director said she could drive her if that were necessary. No specific plans were made at that point and the director went back to work. The claimant went into one of the classrooms and, in front of another teacher, stated, "Whatever you stupid whore!" The claimant denies making that particular statement, but claims she did say, "Ain't that about a whore." The teacher left and reported the claimant's comments to the director, who immediately returned and angrily told the claimant to go to the office. When the claimant arrived in the office, the director told her she needed to leave. The claimant replied that it was not fair that the director yelled at her in front of others. The director calmed down at that point and the two discussed things further.

The claimant told the employer she was going to give her two weeks notice because she and her husband were gaining custody of her two step-kids. The employer stated that the children's center did not have to allow the claimant to work her final two weeks and the claimant stated she would think about it. The director told the claimant to call her on June 24, 2005, but the claimant made no such call. The claimant did not report to work on June 27, 2005, and the employer did not hear anything more from the claimant.

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. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

The claimant contends she was fired, but the facts prove otherwise. 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 demonstrated her intent to quit and acted to carry it out by not calling the employer and/or returning to work after June 22, 2005. At the end of her meeting with the director on June 22, 2005, it was left that the claimant would call the employer on June 24, 2005. If she had been fired, it seems very unlikely that the employer would ask the claimant to call on that date. The preponderance of the evidence demonstrates that the claimant quit her employment because she was mad at the employer and wanted to be home with her step-kids.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

DECISION:

The unemployment insurance decision dated August 2, 2005, reference 03, 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.

sdb/kjw