

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA L PRIEBE

Claimant

HERITAGE WOODS OF ALEDO

Employer

APPEAL NO. 11A-UI-07397-PT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/01/11

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 25, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 29, 2011. Claimant participated personally. Employer participated by Heather Dickerhoof, administrator. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issues in this matter are whether claimant was discharged for misconduct or whether claimant quit for good cause attributable to employer in lieu of discharge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 25, 2011.

Claimant resigned on April 25, 2011. Claimant was given the chance to resign or face discharge because the employer deemed her not a good fit for the position. Claimant would have faced discharge but for the involuntary resignation. Claimant quit because she did not want a termination on record.

REASONING AND CONCLUSIONS OF LAW:

Claimant quit in lieu of facing discharge from employment. This is not a disqualifiable event because claimant involuntarily separated from employment to avoid the discharge. The rules specifically state that benefits shall be allowed when a person quits in lieu of discharge. It is not a true voluntary quit nor is it a discharge. It is an involuntary quit, a different type of separation not disqualifying under Iowa Code § 96.5-1 as a voluntary quit nor under 96.5-2-A as a discharge for misconduct.

While there is a difference in opinion on this issue within the appeals bureau, the plain reading of the rule has but one logical conclusion. There is no language that shifts the issue and burden of proof from a quit to a misconduct issue. Nor do the rules of statutory construction allow for a misconduct analysis under this rule. Tradition within the appeals bureau recently has been to shift this type of case to the issue of misconduct. This approach gives the employer a second bite at the apple, so to speak. The undersigned has always disagreed with this erroneous interpretation.

The rule specifically states that quitting under such duress is a quit for good cause attributable to employer. We as administrative law judges are bound by the enabling statutes and rules. Absent a specific rule that shifts this issue to misconduct, this is a non disqualifying event as shown by the rule. Employers receive significant legal benefit where an employee chooses to quit rather than face discharge.

When first introduced, the rule history was explained, that qualification is automatic under this circumstance because of the benefit conferred on the employer by a voluntary resignation. That history has been ignored far too long. The department's fact finding ANDS decision, which has remained static, still reflects the original intent of the rule. The ANDS form finds that a quit when faced with a quit or discharge scenario is a quit with good cause attributable to the employer.

The administrative law judge holds that claimant was not discharged for an act of misconduct and was not a voluntary quit and, as such, is not disqualified for the receipt of unemployment insurance benefits. This is a quit for good cause attributable to employer based on the administrative rule.

Iowa Code § 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(21) 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:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

Researching rule history is cumbersome and tedious for a complete history. In the administrative code (<http://www.legis.state.ia.us/IAC.html>) at the end of every chapter (PDF version) there is a history for all the rules in the chapter (not by individual rule but by chapter). In the case of 871 IAC chapter 24 the history from that chapter is copied and given below. One must then look at the individual amendment filings to see which rules(s) were changed in that filing by using the published date and looking at the administrative bulletin (<http://www.legis.state.ia.us/asp/BulletinSupplement/bulletinListing.aspx>) for the appropriate published dates. (The bulletins are electronically archived only back to 1997. Published bulletins prior to 1997 are available in paper form in the state law library. If you go too far back there are no bulletins but merely filings by date.) (Credit goes to Deputy Workers' Compensation Commissioner Clair Cramer for outlining this procedure.)The undersigned has

not yet completed this research but sets forth the procedure for future reference and appellate review:

“This rule is intended to implement Iowa Code § 96.5(10).

[Filed 12/29/55; amended 12/29/58, 6/23/59, 12/4/59, 11/22/61, 4/21/72]
[Filed 10/28/75, Notice 9/22/75—published 11/17/75, effective 12/23/75]
[Filed 4/29/76, Notice 3/22/76—published 5/17/76, effective 6/21/76]
[Filed 12/9/76, Notice 11/3/76—published 12/29/76, effective 2/2/77]
[Filed 9/30/77, Notice 8/24/77—published 10/19/77, effective 11/23/77]
[Filed 5/24/78, Notice 4/5/78—published 6/14/78, effective 7/19/78]
[Filed 8/17/78, Notice 6/28/78—published 9/6/78, effective 10/11/78]
[Filed 12/22/78, Notice 11/15/78—published 1/10/79, effective 2/14/79]
[Filed emergency 6/22/79—published 7/11/79, effective 7/1/79]
[Filed 10/12/79, Notice 6/27/79—published 10/31/79, effective 12/5/79]
[Filed emergency 11/29/79—published 12/26/79, effective 11/29/79]
[Filed 2/12/80, Notice 10/31/79—published 3/5/80, effective 4/9/80]
[Filed 7/31/80, Notice 4/30/80—published 8/20/80, effective 9/24/80]
[Filed 12/4/80, Notice 10/1/80—published 12/24/80, effective 1/28/81]
[Filed 4/10/81, Notice 2/18/81—published 4/29/81, effective 6/4/81]
[Filed emergency 6/15/81—published 7/8/81, effective 7/1/81]
[Filed 11/6/81, Notice 7/8/81—published 11/25/81, effective 12/30/81]
[Filed 4/23/82, Notice 11/25/81—published 5/12/82, effective 6/17/82]
[Filed 8/26/82, Notice 7/21/82—published 9/15/82, effective 10/20/82]
[Filed emergency 9/10/82—published 9/29/82, effective 9/10/82]
[Filed 10/8/82, Notice 8/18/82—published 10/27/82, effective 12/2/82]
[Filed emergency 10/25/82—published 11/24/82, effective 10/25/82]
[Filed 1/27/83, Notice 10/13/82—published 2/16/83, effective 3/23/83]
[Filed 3/11/83, Notices 11/25/81, 5/26/82—published 3/30/83, effective 5/5/83]
[Filed 3/28/83, Notice 2/16/83—published 4/13/83, effective 5/18/83]
[Filed emergency 3/31/83—published 4/27/83, effective 4/1/83]
[Filed emergency 6/27/83—published 7/20/83, effective 7/1/83]
[Filed emergency 8/3/83—published 8/31/83, effective 8/3/83]
[Filed 2/10/84, Notice 8/31/83—published 2/29/84, effective 4/5/84]
[Filed 5/2/84, Notice 2/29/84—published 5/23/84, effective 6/27/84]
[Filed 4/27/84, Notice 2/29/84—published 5/23/84, effective 6/28/84]
[Filed emergency 6/1/84—published 6/20/84, effective 6/1/84]
[Filed 8/24/84, Notice 6/20/84—published 9/12/84, effective 10/17/84]
[Filed 1/11/85, Notice 8/29/84—published 1/30/85, effective 3/6/85]
[Filed 1/14/85, Notice 10/24/84—published 1/30/85, effective 3/6/85]
[Filed 8/30/85, Notice 7/3/85—published 9/25/85, effective 10/30/85]
[Filed 9/20/85, Notice 8/14/85—published 10/9/85, effective 11/13/85]
[Filed emergency 6/13/86—published 7/2/86, effective 7/1/86]
[Filed emergency 9/5/86—published 9/24/86, effective 9/5/86]
[Filed emergency 10/1/86—published 10/22/86, effective 10/1/86]
[Filed emergency 10/31/86—published 11/19/86, effective 10/31/86]
[Filed 11/7/86, Notice 8/13/86—published 12/3/86, effective 1/7/87]
[Filed 12/8/86, Notice 10/22/86—published 12/31/86, effective 2/4/87]
[Filed 1/13/87, Notice 11/19/86—published 1/28/87, effective 3/4/87]
[Filed emergency 6/12/87—published 7/1/87, effective 7/1/87]
Ch 24, p.62 Workforce Development [871] IAC 5/5/10
[Filed 6/12/87, Notice 4/8/87—published 7/1/87, effective 8/5/87]
[Filed 6/12/87, Notice 5/6/87—published 7/1/87, effective 8/5/87]

[Filed 7/24/87, Notice 6/3/87—published 8/12/87, effective 9/16/87]
[Filed 9/4/87, Notice 7/1/87—published 9/23/87, effective 10/28/87]
[Filed emergency 10/30/87—published 11/18/87, effective 12/1/87]
[Filed 1/8/88, Notice 11/18/87—published 1/27/88, effective 3/2/88]
[Filed 2/19/88, Notice 12/30/87—published 3/9/88, effective 4/13/88]
[Filed 4/1/88, Notice 2/10/88—published 4/20/88, effective 5/25/88]
[Filed 6/24/88, Notice 4/20/88—published 7/13/88, effective 8/17/88]
[Filed 8/5/88, Notice 6/29/88—published 8/24/88, effective 9/28/88]
[Filed 11/14/88, Notices 8/24/88, 10/19/88—published 11/30/88, effective 1/4/89]
[Filed 11/23/88, Notice 10/19/88—published 12/14/88, effective 1/18/89]
[Filed 2/3/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]
[Filed 3/31/89, Notice 2/22/89—published 4/19/89, effective 5/24/89]
[Filed 6/23/89, Notice 5/17/89—published 7/12/89, effective 8/16/89]
[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]
[Filed 3/30/90, Notice 2/21/90—published 4/18/90, effective 5/23/90]
[Filed 6/22/90, Notice 5/16/90—published 7/11/90, effective 8/15/90]
[Filed 9/28/90, Notice 8/22/90—published 10/17/90, effective 11/21/90]
[Filed 12/21/90, Notice 11/14/90—published 1/9/91, effective 2/13/91]
[Filed 7/30/91, Notice 6/12/91—published 8/21/91, effective 9/25/91]
[Filed 9/13/91, Notice 8/7/91—published 10/2/91, effective 11/6/91]
[Filed 5/22/92, Notice 4/15/92—published 6/10/92, effective 7/15/92]
[Filed emergency 4/23/93—published 5/12/93, effective 6/1/93]
[Filed 6/17/93, Notice 5/12/93—published 7/7/93, effective 8/11/93]
[Filed 9/10/93, Notice 8/4/93—published 9/29/93, effective 11/3/93]
[Filed 11/16/94, Notice 9/14/94—published 12/7/94, effective 1/11/95]
[Filed 6/16/95, Notice 5/10/95—published 7/5/95, effective 8/9/95]
[Filed 12/28/95, Notice 11/22/95—published 1/17/96, effective 2/21/96]
[Filed 8/22/96, Notice 7/17/96—published 9/11/96, effective 10/16/96]
[Transferred from 345—Ch 4 to 871—Ch 24 IAC Supplement 3/12/97]
[Filed 1/20/99, Notice 12/16/98—published 2/10/99, effective 3/17/99]
[Filed 7/9/99, Notice 6/2/99—published 7/28/99, effective 9/1/99]
[Filed 10/24/01, Notice 9/19/01—published 11/14/01, effective 12/19/01]
[Filed emergency 4/12/02—published 5/1/02, effective 4/12/02]
[Filed 7/18/03, Notice 6/11/03—published 8/6/03, effective 9/10/03]
[Filed 9/4/08, Notice 7/30/08—published 9/24/08, effective 10/29/08]
[Filed ARC 8711B (Notice ARC 8583B, IAB 3/10/10), IAB 5/5/10, effective 6/9/10]

1 See rule 345—4.50(96)

2 Effective date of 24.26(14) and 24.26(15) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 8, 1999.”

DECISION:

The decision of the representative dated May 25, 2011, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Ron Pohlman
Administrative Law Judge

Decision Dated and Mailed

rrp/pjs