

**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**

**BILLIE J GERVELER
2010 AVE D
FORT MADISON IA 52627**

**DAVID C WENGER-KELLER MD
5409 AVE O STE 103
FORT MADISON IA 52627**

**Appeal Number: 05A-UI-06589-AT
OC: 06-05-05 R: 04
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:

Billie J. Gerveler filed a timely appeal from an unemployment insurance decision dated June 20, 2005, reference 01, which disqualified her for benefits. After due notice was issued, a telephone hearing was held on July 25, 2005 with Ms. Gerveler participating and presenting additional testimony by Michelle Foxall. David C. Wenger-Keller, M.D., appeared on his own behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Billie J. Gerveler was employed as a receptionist and inputter by David C. Wenger-Keller, M.D. from February 4, 2002 until she resigned effective May 30, 2005. On or about May 13, 2005, Dr. Wenger-Keller's office manager counseled Ms. Gerveler because of complaints that she had received that Ms. Gerveler was being rude with co-workers. Ms. Gerveler felt the warning was unwarranted because she believed that she was doing more work than the other employees and did not have time to mistreat them. On the following Monday she gave Dr. Wenger-Keller her two weeks' notice that she was resigning because of the warning and because of the office manager. Ms. Gerveler believed that the office manager and certain other employees formed a clique who would gang up on one other employee at a time in an effort to get the employee to resign. One former employee cited by Ms. Gerveler in her testimony had actually resigned after receiving several warnings for repeated tardiness.

In November 2004, Dr. Wenger-Keller evaluated on Ms. Gerveler's work. He found it satisfactory. She received a raise and a bonus. At the time Ms. Gerveler complained to Dr. Wenger-Keller that she was being assigned a second consecutive six-month rotation of working late hours. She had just completed a six-month rotation of working late on Wednesday evenings. Dr. Wenger-Keller saw to it that the schedule was changed so that Ms. Gerveler was not scheduled to work late on any evening.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Gerveler left employment with good cause attributable to the employer. It does not.

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.

An individual who resigns because of dissatisfaction with the work environment or because of a personality conflict with a supervisor leaves work without good cause attributable to the employer. See 871 IAC 24.25(21) and (22), respectively. Similarly, an individual who resigns after being reprimanded is presumed to have left work without good cause attributable to the employer according to 871 IAC 24.25(28). The evidence in this record persuades the administrative law judge that Ms. Gerveler felt that the reprimand in May had been unjustified and that she did not like working with the office manager and certain of her co-workers. The evidence falls within the circumstances contemplated by these rules.

On the other hand, benefits may be allowed if an individual resigns because of intolerable or detrimental working conditions. See 871 IAC 24.26(4). The evidence does not establish that working conditions had deteriorated to this level. Furthermore, it appears from testimony that when Ms. Gerveler would take a legitimate complaint to Dr. Wenger-Keller, he was receptive to her complaints and attempted to be fair to all employees. Ms. Gerveler did not give Dr. Wenger-Keller the opportunity to review the events leading to the warning before she submitted her letter of resignation. Doing so at the time of submitting the letter of resignation or

thereafter is insufficient for purposes of unemployment insurance benefits because of the rule found at 871 IAC 24.25(37). That rule provides that an employer may accept a letter of resignation when tendered and need not allow an employee to rescind it even if the employee requests that the employer do so. A reasonable person in the claimant's situation would have sought relief from the employer before resorting to resignation.

DECISION:

The unemployment insurance decision dated June 20, 2005, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

pjs/pjs