

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

MARY E AVENANTI  
909 – 2<sup>ND</sup> ST NW  
WAVERLY IA 50677-1529

WAVERLY-SHELL ROCK COMMUNITY  
SCHOOL DISTRICT  
ATTN DENNIS L STUFFLEBEAM  
14156 – 4<sup>TH</sup> AVE SW  
WAVERLY IA 50677

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Appeal Number: 06A-UI-06590-HT  
OC: 06/04/06 R: 03  
Claimant: Respondent (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Quit  
Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Waverly-Shell Rock Community School District (Waverly), filed an appeal from a decision dated June 22, 2006, reference 02. The decision allowed benefits to the claimant, Mary Avenanti. After due notice was issued a hearing was held by telephone conference call on July 18, 2006. The claimant participated on her own behalf and was represented by Attorney Edward Krug. The employer participated by Superintendent Jere Vyverberg and Business Manager Dennis Stufflebeam.

#### 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: Mary Avenanti was employed by Waverly from August 23, 2005 until May 17, 2006. She was a part-time teacher associate working 20 hours per week. At the time of hire the claimant was to be given orientation by her supervising teacher, Ms. Klender, but this was very perfunctory. She was not given any policy handbook or told to familiarize herself with the policy manual in the main office.

Some time April 2006 the claimant was driving seven students in a school vehicle on a field trip to Cedar Rapids, Iowa. During the trip one student asked if she could smoke and was told no. Ms. Klender had told the claimant that students were not allowed to smoke on school property, but had also said teachers did not go out of their way to go looking for students violating the policy. Later in the trip Ms. Avenanti smelled smoke and perfume in the vehicle and told the students to stop. After a stop at a convenience store the claimant loaded the students back into the vehicle and told them that smoking would get all of them in trouble, including herself, and they were not to do it again.

Three or four weeks later a student told Ms. Klender that during the field trip other students had been smoking marijuana. This was reported to Superintendent Jere Vyverberg, who interviewed Ms. Klender and one of the students, and Ms. Klender interviewed the other students who had been on the field trip. He went back to his office to consider the information and check the school policies.

On May 17, 2006, he summoned Ms. Avenanti to his office to discuss the situation. She told him what had happened and how she had responded. He told her she should have "searched" the students for any contraband and then immediately reported the matter, by phone, to the lead teacher who was in another vehicle in the caravan. Mr. Vyverberg gave her the choice of resigning immediately, being suspended without pay until the matter could go before the school board or being dismissed immediately. She chose to resign.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant quit work for reasons which would disqualify her unemployment 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.

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.

The claimant did not voluntarily quit as continued work was not available to her had she not resigned. She was given the choice of resigning, being suspended without pay or being discharged. Under the provisions of the above Administrative Code section, this is not a voluntary quit.

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The criteria for a discharge is generally willful and deliberate conduct not in the best interests of the employer. The claimant was aware students were not to smoke on school property and she did put a stop to them smoking in the van. The record is clear that there was no formal orientation given to the claimant about school policies, no copy of the policies were provided to her and she was not even told to review the policy manual in the main office. Ms. Klender was somewhat ambiguous about the smoking policy, only saying that teachers did not "go looking" for students who were smoking on school property.

Given the very inadequate training the claimant was given, the administrative law judge believes she handled the situation of the students smoking in the vehicle according to her best judgment. She made a good-faith effort to enforce the smoking policy according to her best understanding. The employer has not met its burden of proof to establish willful misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of June 22, 2006, reference 02, is affirmed. Mary Avenanti is qualified for benefits, provided she is otherwise eligible.

bgh/pjs