

**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**

**SANDI J GUELY  
4320 PARK HILL CIR  
URBANDALE IA 50322**

**JEFFREY LENZ MD PC  
974 - 73<sup>RD</sup> ST STE 40  
DES MOINES IA 50312-1026**

**Appeal Number: 04A-UI-05959-DW  
OC: 05/02/04 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, 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 are 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 – Voluntary Quit

STATEMENT OF THE CASE:

Sandi J. Guely (claimant) appealed a representative's May 18, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Jeffrey Lenz, M.D., (employer) would not be charged because she had voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on July 13, 2004, in Des Moines, Iowa. The claimant participated in the hearing. Rosemarie Hufford was present and available to testify on the claimant's behalf. Jeffrey Lenz, Ruth Roberts and Karen Idso appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked three years for the employer. The claimant was one of the two registered nurses the employer had working in the office.

During the week of April 26, the employer granted the other registered nurse time off from work, May 3 through 8. The claimant understood the employer wanted at least one registered nurse working during clinic hours. On April 29, 2004, the claimant learned her daughter, who was a student in New York, had to undergo surgery on May 7 in New York. Her daughter's doctor found a mass in her daughter's chest and had concerns about it being cancerous. The claimant's daughter is single and alone in New York.

On April 30, the claimant asked the employer if she could have Friday, May 7, off from work so she could be with her daughter when she had the surgery. The employer denied the claimant's request for time off on May 7 because he needed her at work. The claimant was the only registered nurse working on May 7.

The claimant understood why the employer wanted her at work on May 7, but the claimant also needed to be with her daughter in New York. The claimant's daughter's doctor agreed to do the surgery the afternoon of May 7 instead of the morning so the claimant could be with her daughter when she was in recovery.

On Monday, May 3, at the end of the day, the claimant told the employer he would not be happy with her but she had to leave work early on Friday, May 7. The claimant wanted to leave work only 90 minutes early so she could get on the last flight to New York on May 7 and be with her daughter when she was in recovery. The employer told the claimant again she could not have any time off from work on Friday and she had to work her entire shift. Although the claimant indicated how important being with her daughter on May 7 was to her and to her daughter, the employer told the claimant she would be discharged if she left work early on Friday. The claimant then told Roberts she had to leave work early on Friday and that she was sorry as she left work on Monday.

Tuesday, May 4, the claimant did not report to work. Roberts called the claimant's home to find out why she was not at work. The claimant's husband indicated the claimant was not at work because she had been discharged and she was going to look for another job. On May 5, the claimant indicated to Roberts she would have returned to work if the employer allowed her some time off on May 7.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. Based on Roberts' testimony, the witness who was not as emotionally involved as the claimant and the employer, the evidence indicates the employer would discharge the claimant on May 7 if she left work early. The employer, however, did not intend to discharge the claimant on May 3. Instead, the employer expected the claimant to continue working. The claimant ultimately initiated her separation as of May 4 because the employer would not allow her

to leave work early on May 7 without discharging her. It was the claimant's decision not to return to work after May 3, 2004. For unemployment insurance purposes, the claimant quit her employment as of May 4, 2004 when she did not return to work and received information the employer expected her at work on May 4.

When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2. The law presumes a claimant voluntarily quits with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4).

When the other registered nurse asked for time off the week of May 3, the claimant had no idea her daughter, a student in New York, would be scheduled for surgery on May 7. The claimant did not learn about the necessity of surgery until the employer gave the other registered nurse time off the entire week of May 3. After the employer denied the claimant's request for time off on May 7, she took reasonable steps to reduce the time off she needed to be gone on May 7. The claimant learned her daughter's doctor would perform the surgery the afternoon of May 7 instead of in the morning. As a result, if the claimant could get on the last flight from Des Moines to New York, she would only have to leave work about 90 minutes early and could still be with her daughter after the surgery. The claimant also wanted to be with her daughter if her doctor found any cancer.

Unfortunately, the employer did nothing about attempting to make any accommodations for the claimant. When the claimant approached the employer on Monday afternoon and even explained how important it was to her daughter and to the claimant that the claimant be with her daughter after the surgery, the employer denied the claimant any time off and told her she would be discharged if she left work early on Friday. While the employer had a right to make any business decision he deemed necessary, his decision lacked human compassion and understanding. Even though the employer failed to see if anyone could work for the claimant for 90 minutes on May 7, the evidence does not establish the claimant left because of intolerable working conditions. Instead, she did not return to work after May 3 because the employer made her make a decision that she either work all day of May 7 or she would be discharged. Instead, of trying to work out any other accommodation, the claimant was upset and felt the employer should apologize to her for failing to understand her position. (Unfortunately, this is an example where everyone lost. The claimant lost a job she enjoyed and the employer lost a reliable three-year employee.)

The claimant had compelling personal reasons for quitting as of May 4. For unemployment insurance purposes, her reasons for failing to return to work after May 3 do not qualify her to receive unemployment insurance benefits. As of May 2, 2004, the claimant is not qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's May 18, 2004 decision (reference 01) is affirmed. The claimant quit her employment by failing to return to work after May 3, 2004. The claimant had compelling personal reasons for quitting, but her reasons do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of May 2, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/tjc