**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

**WENDY N THOMPSON**
**302 GOODE ST**
**BLOOMFIELD IA 52537**

**TANAGER PLACE & CAMP TANAGER**
**2309 C ST SW**
**CEDAR RAPIDS IA 52404**

**Appeal Number: 04A-UI-08165-RT**
**OC: 07-04-04 R: 03**
**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 Quitting

STATEMENT OF THE CASE:

The claimant, Wendy N. Thompson, filed a timely appeal from an unemployment insurance decision dated July 20, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on August 19, 2004. The record was opened at 10:07 a.m. and recessed at 10:58 a.m. because all of the evidence had not been submitted. The hearing was to be reconvened at 9:00 a.m. on Friday, August 27, 2004. The reconvened hearing began at 9:03 a.m. and the record was closed and the hearing completed at 9:59 a.m. The claimant participated in both hearings. Christina Ballard, Program Coordinator in Ottumwa, Iowa, and Vicki Doneth, Director of Community Based Services, participated in both parts of the hearing for the employer, Tanager Place & Camp Tanager. Kathy Krantz, Human Resources Manager, participated in the first half of the hearing for the employer. Jeff Humiston, Chief Financial Officer, participated in the second half of the hearing for the employer. Claimant's Exhibit's A through C and Employer's Exhibits 1 and 2, were

admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

On August 13, 2004, the administrative law judge received a request from the claimant for certain subpoenas, including information for other employees, as well as other documents. The administrative law judge called the claimant at 1:40 p.m. on that day and the claimant called the administrative law judge back at 2:26 p.m. on that day. The administrative law judge informed the claimant that her request for a subpoena was not timely because she had not allowed five working days and further, the administrative law judge was not able to issue subpoenas for documents relating to other individuals not a party to the unemployment insurance hearing, and denied the claimant's request for a subpoena. The administrative law judge pointed out that the issue appeared to be a quit and not a discharge and documents related to a discharge would not be relevant. Further, the administrative law judge pointed out to the claimant that he did have the authority to keep the record open after the hearing for an exchange of any documents deemed crucial. The hearing was held. The administrative law judge now concludes that the evidence is properly submitted and there is no need to issue the subpoenas as requested by the claimant and such request is again denied.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Claimant's Exhibit's A through C and Employer's Exhibit 1 and 2, the administrative law judge finds: The claimant was employed by the employer as a full-time supervision specialist from August 25, 2003 until she voluntarily quit effective April 1, 2004. On March 31, 2004, the claimant submitted a written resignation to be effective that day, March 31, 2004, but then requested that it be effective April 1, 2004, and this was approved by the employer. The claimant quit because she believed that she was being harassed at work. The claimant, when hired, was informed that her position required that she bill 128 units per month. The claimant only averaged billing between 50 and 60 units per month. The units have to do with meetings with clients. The employer became concerned that the claimant was not meeting her billing units and that some clients were not being met or visited for long periods of time. The claimant's immediate supervisor, Christina Ballard, Program Coordinator in Ottumwa, Iowa, and Vicki Doneth, Director of Community Based Services, both witnesses for the employer, met with the claimant on January 7, 2004 about her shortage in units. They indicated to the claimant that they were concerned that she was not meeting her billing units and was not seeing some clients for long periods of time. They made suggestions that she should receive more referrals and make up visits that had been canceled. The claimant was having some difficulty in making appointments with some clients and when other appointments were made, sometimes the clients would not appear and other times the claimant would cancel the appointment. The claimant was not meeting her billing requirements. The claimant believed that she had a full caseload but the employer did not. Throughout her employment the claimant was the only supervision specialist out of the Ottumwa office, although two were hired, one left.

The claimant still did not meet her unit requirements and some clients were still not being seen promptly, so Ms. Doneth and Ms. Ballard again met with the claimant on February 18, 2004 and discussed this matter once again. Ms. Ballard and Ms. Doneth instructed the claimant to send them an e-mail each day indicating the clients that she had seen and also instructed the claimant to e-mail other caseworkers about cases that she could take over or could handle. The claimant did not always e-mail Ms. Ballard and Ms. Doneth and further, only e-mailed other caseworkers once. The claimant did have a receptionist e-mail caseworkers again, but at most, the claimant only sent out two e-mails to caseworkers soliciting additional cases. The claimant

did take on three new cases. The claimant did exchange some e-mails, as shown at claimant's Exhibit A, including requesting a meeting with Mary Estel, Operating Officer. Ms. Estel informed the claimant that she needed to communicate with Ms. Ballard and Ms. Doneth because they were her supervisors and were willing to continue to meet with her. The claimant believed that she was being unfairly treated by Ms. Doneth and Ms. Ballard because they were requesting that she take on more cases. The claimant was missing many appointments either because she could not schedule them or because she cancelled them or because others cancelled them. The claimant did not take other cases to insert during the times when she was not busy. The claimant asked for flextime, but the employer does not have flextime or compensation time, but rather, allows a flexible schedule if the employees are meeting their expectations and the claimant was not. The claimant's last e-mail and communication with Ms. Estel occurred on March 4, 2004, but the claimant did not quit until effective April 1, 2004, and the claimant never indicated or announced an intention to quit to anyone at the employer if her concerns were not addressed by the employer.

The claimant believed that she was harassed by Ms. Thompson and Ms. Ballard, but could not demonstrate any specific evidence of such harassment. There were weekly team meetings in which assignments were discussed, but the claimant was never reprimanded at these weekly meetings. The claimant's scheduling problems were discussed with Ms. Ballard and Ms. Doneth at the meetings, as noted above. Both the claimant and Ms. Ballard missed or rescheduled other meeting scheduled between them and Ms. Doneth.

The claimant continued to fail to meet her unit expectations and continued to fail to meet with some clients promptly and matters came to a head on March 30, 2004, when the claimant was given a career decision day, as shown at Employer's Exhibit 1. The claimant was given three options, including termination, resignation or continued employment with a letter of commitment. The claimant chose to resign and did so the next day, March 31, 2004. The claimant was encountering some stress problems during this time, as shown at Claimant's Exhibit C, but her physician never told the claimant that she had to quit and the claimant never explained to the employer the stress situation, nor requested any kind of accommodation, nor did she indicate to the employer that she would quit over her stress condition if the employer did not address her concerns.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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(2), (3), (4), (1) provide:

> 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:

(2) The claimant left due to unsafe working conditions.

(3) The claimant left due to unlawful working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

871 IAC 24.26(6)b, (6)a 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:

(6) Separation because of illness, injury or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

871 IAC 24.25(6), (21),(22), (27), (28) provide:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa

Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer.

(6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

(27) The claimant left rather than perform the assigned work as instructed.

(28) The claimant left after being reprimanded.

The parties concede and the administrative law judge concludes that the claimant voluntarily quit effective April 1, 2004. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant testified that she quit because she felt harassed at work. However, the claimant was unable to offer any specific examples of unfair treatment or harassment by the employer. The claimant remarked that she was harassed by the way she was treated by her supervisors, Christina Ballard, Program Coordinator in the Ottumwa Office, and Vicki Doneth, Director of Community Based Services, and two of the employer's witnesses, but she never provided any specific examples or instances of harassment or unfair treatment. The claimant testified that she believed that she was singled out and criticized at team meetings, but the evidence establishes that schedules and billing hours were discussed but the claimant was never reprimanded at these team meetings. It is true that the employer was concerned that the claimant was not meeting her 128 unit per month requirement, only averaging between 50 and 60 units per month, and discussed this with the claimant on a couple of occasions. The administrative law judge does not believe that this amounts to harassment. The claimant herself concedes that she was not meeting the unit requirement. The employer was also concerned that some clients were not being met by the claimant for long periods of time. The administrative law judge believes that the employer had legitimate concerns about the claimant's work and took these up with her. The employer believed that the claimant did not have a full caseload, but the claimant disagreed. In any event, the evidence establishes that the claimant did not meet with clients appropriately and did not meet her 128 unit requirement. There were various reasons for this, including a difficulty in making appointments with clients, clients failing to attend appointments, and the claimant canceling some appointments. As noted in the Findings of Fact, the claimant met with Ms. Ballard and Ms. Doneth on at least two occasions and they suggested things that the claimant could do and, among other things, instructed the claimant to each send them e-mails of the clients she had seen. The claimant conceded that she did not always do that. She was also instructed to contact or e-mail other caseworkers about additional cases she could take and the claimant only did so on two occasions, and only took three additional cases. The administrative law judge concludes that the employer's concerns about the claimant's caseload and failure to meet her unit requirement and meet with clients appropriately was not harassment and further, did not cause the

claimant's working conditions to be unsafe, unlawful, intolerable or detrimental, nor did it subject the claimant to a substantial change in her contract of hire. Additionally, the administrative law judge concludes that the claimant has failed to demonstrate by a preponderance of the evidence any working conditions that were unsafe, unlawful, intolerable or detrimental, or that established a substantial breach or change in her contract of hire.

Late in the claimant's testimony she brought up a stress condition, as shown at Claimant's Exhibit C, indicating that it was caused by the employer. However, the claimant conceded that her physician or health care professional did not tell the claimant that she had to quit her employment and the claimant further conceded that she never informed the employer of this stress condition or expressed any concerns about that or asked for any kind of accommodation. The claimant also conceded that she never indicated or announced an intention to quit if her concerns were not addressed or reasonably accommodated. The administrative law judge concludes that there is no competent evidence showing adequate health reasons to justify a termination. Further, there is no evidence that the claimant has ever returned to the employer and offered to go back to work. Accordingly, the administrative law judge concludes that if the claimant in fact separated because of an illness, either employment related or non-employment related, she has not demonstrated by a preponderance of the evidence that she is entitled to receive unemployment insurance benefits as a result.

The claimant testified that the employer failed to meet with her, but it was only Mary Estel, Operating Officer, who was reluctant to meet with the claimant, as shown by e-mails at Claimant's Exhibit A. Ms. Estel preferred that the claimant communicate with her supervisors. The administrative law judge believes that this is appropriate and the supervisors gave every indication to the claimant that they would continue to meet with her and assist her with her scheduling and attempt to work with her on the shortage of units. The administrative law judge also notes that the e-mails submitted by the claimant at Claimant's Exhibit A do not appear to be the kinds of e-mails that would make her working conditions unsafe, unlawful, intolerable or detrimental. They do not appear to be inflammatory. Rather, the administrative law judge concludes that the evidence establishes that the claimant quit when she was presented a career decision day, as shown at Employer's Exhibit 1. This is not a discharge, nor is it a forced resignation. It is in the nature of a reprimand requesting that the claimant write a letter of commitment acknowledging difficulties and indicating that she would do what was requested. The administrative law judge notes that the claimant consistently refused to add to her caseload and, the claimant even conceded herself that she did not e-mail Ms. Doneth and Ms. Ballard as they had instructed. Leaving work voluntarily because of a reprimand is not good cause attributable to the employer. There is evidence that the claimant could not work with Ms. Ballard and Ms. Doneth, and the claimant even concedes as much. However, leaving work as a result of an inability to work with other employees or as a result of a personality conflict with a supervisor is not good cause attributable to the employer. Finally, there is some evidence that the claimant left because of a dissatisfaction with the work environment or left rather than perform the assigned work as instructed and, again, this is not good cause attributable to the employer. Although the claimant did express some concerns to Ms. Estel, the last concerns expressed to her were on March 4, 2004, almost one month before the claimant quit. Finally, the claimant never specifically indicated or announced an intention to quit to anyone at the employer with a reasonable opportunity for the employer to address her concerns before she did quit.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits.

Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of July 20, 2004, reference 01, is affirmed. The claimant, Wendy N. Thompson, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits because she voluntarily left her employment without good cause attributable to the employer.

dj/b