

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GINA A HOUSTON
Claimant

APPEAL NO. 08A-UI-10108-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN FAMILY MUTUAL INS CO
Employer

**OC: 09/28/08 R: 01
Claimant: Appellant (1-R)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Gina Houston filed an appeal from a representative's decision dated October 23, 2008, reference 01, which denied benefits based on her separation from American Family Mutual Insurance Company. After due notice was issued, a hearing was held by telephone on November 17, 2008. Ms. Houston participated personally. American Family did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Houston was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Houston has provided services to American Family Mutual Insurance Company since June of 2005. She indicated during her testimony on November 17 that she was the sole proprietor of the business and employed three others in the business at various times. She receives an IRS Form 1099 at the end of the year to use for filing her tax returns. American Family has reported her earnings to Workforce Development as wages. No taxes were taken out of her pay.

REASONING AND CONCLUSIONS OF LAW:

The issue has arisen as to whether Ms. Houston was, in fact, an employee of American Family. The administrative law judge cannot determine if she left "employment" for any disqualifying reason until such time as it is determined that her services for American Family constituted "employment" within the meaning of the Iowa Employment Security Law. The evidence is conflicting regarding her true status. On one hand, she receives a Form 1099 at the end of the year, a factor that suggests she was an independent contractor. On the other hand, American Family has reported her earnings as "wages," a factor that suggests she was an employee.

This matter shall be remanded to the Tax section to determine the nature of the relationship between Ms. Houston and American Family. If it is determined that she was an employee, the administrative law judge will then adjudicate the issue of her separation from the employment.

DECISION:

The representative's decision dated October 23, 2008, reference 01, is hereby affirmed at this time. This matter is remanded to the Tax section to determine the relationship between Ms. Houston and American Family.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw