

**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**

**MARIANNE L RIZZO
4753 S DERINDA RD
ELIZABETH IL 61028**

**EAGLES ROOST
2501 US HWY 20 W
ELIZABETH IL 61028**

**Appeal Number: 06A-UI-05712-CT
OC: 05/22/05 R: 04
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, 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(2)a – Discharge for Misconduct
Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Eagles Roost filed an appeal from a representative's decision dated May 22, 2006, reference 03, which held that no disqualification would be imposed regarding Marianne Rizzo's separation from employment. After due notice was issued, a hearing was held by telephone on June 20, 2006. Ms. Rizzo participated personally. The employer participated by Iqrar Bokhari, Owner.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Rizzo was employed at Eagles Roost as a full-time manager when new owners took over the business on May 1, 2006. Her job as manager was no longer available as the new owners brought in its own manager. Ms. Rizzo continued to work for the new owners through May 5 even though she did not submit an application for work with the new owners.

On May 6, Ms. Rizzo spoke with Iqrar Bokhari concerning what benefits would be available under the new owners. She had been receiving health insurance coverage for herself and her husband through the prior owners. Mr. Bokhari indicated that the insurance coverage would not be available immediately and he did not know if or when such benefits might be made available in the future. Ms. Rizzo was receiving a salary of \$2,000.00 per month under the previous owners. The new owners could not provide the insurance coverage desired by Ms. Rizzo and were unsure as to whether it could afford her wages. Therefore, the decision was made to release her from the employment.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Rizzo was separated from employment for any disqualifying reason. Although she did not submit an application for employment with the new owners, she was allowed to continue working after the change in ownership. Her separation occurred because the new owners could not continue the insurance benefits she had been receiving under the previous owners. Whether Ms. Rizzo quit or was discharged, she would be entitled to job insurance benefits.

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). An individual who quits employment because of a change in the terms and conditions of employment is presumed to have quit for good cause attributable to the employer. See 871 IAC 24.26(1) Ms. Rizzo's separation was prompted by the fact that the new owners could not provide the health insurance coverage she had been receiving for herself and her husband. The failure to provide the insurance that had been provided by the prior owners constituted a substantial change in the terms and conditions of employment. This change was not made known to Ms. Rizzo before she performed services for the new owners. Therefore, she did not acquiesce to the change. For the above reasons, the administrative law judge would conclude that a voluntary quit by Ms. Rizzo would be for good cause attributable to the employer.

If the administrative law judge were to conclude that Ms. Rizzo had been discharged, there would still be no basis for disqualification from benefits. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The evidence of record does not establish any acts of misconduct on Ms. Rizzo's part. Therefore, there would be no misconduct disqualification.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to establish that Ms. Rizzo should be disqualified from receiving job insurance benefits.

DECISION:

The representative's decision dated May 22, 2006, reference 03, is hereby affirmed. Ms. Rizzo was separated from Eagles Roost for no disqualifying reason. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/cs