

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORA L WASHBURN
3680 ARGYLE RD
KEOKUK IA 52632-9563**

APPEAL NO. 06A-UI-02145-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LEXINGTON SQUARE LLC
500 MESSENGER RD
KEOKUK IA 52623**

APPEAL RIGHTS:

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:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319***

**GREGORY J HUMPHREY
ATTORNEY AT LAW
627 AVE G
PO BOX 388
FORT MADISON IA 52627-0388**

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.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

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.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORA L WASHBURN
Claimant

APPEAL NO. 06A-UI-02145-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEXINGTON SQUARE LLC
Employer

**OC: 01/15/06 R: 04
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the decision of the representative dated February 7, 2006, reference 01, which held the claimant eligible for employment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 20, 2006. The claimant participated. Participating on behalf of the claimant was her attorney, Mr. Greg Humphrey. The employer participated by Kathy Gable, Administrator and Barbara Turner, Activity Department employee.

ISSUES:

The issues in this matter are whether the claimant quit for good cause attributable to the employer or whether the claimant was discharged for disqualifying misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and having considered all the evidence in the administrative record finds: The claimant worked for this employer from January 1, 2004 until January 9, 2006. The claimant held the position of activity director. Her immediate supervisor was Kathy Gable, Administrator.

On January 9, 2006, Ms. Washburn tendered her notice of intention to resign employment effective that day. The resignation was presented to the care facilities Administrator, Kathy Gable. Ms. Gable did not accept the claimant's resignation and returned the resignation letter to the claimant. Ms. Gable indicated that she was not accepting the resignation and requested that the claimant take one week off of work to "reconsider" her decision. The claimant was instructed to return to work on Monday, January 16, 2006.

On January 16, 2006, the claimant reported back to work as directed and specifically indicated her desire to remain employed. The claimant was nevertheless discharged at that time. The employer decided to discharge the claimant because Ms. Washburn had previously not provided advance notice of her intention to leave, the employer disagreed with the claimant's

reasons for leaving and because a coworker had decided to also leave the facility. Although the coworker had also provided a notice of intention to leave, the coworker's resignation was also not accepted. However, Ms. Turner was not discharged from employment and allowed to rescind her resignation.

REASONING AND CONCLUSIONS OF LAW:

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.

Based upon the testimony of the witnesses and the administrative record, the administrative law judge finds that the claimant's separation from employment took place when Ms. Washburn was discharged from her employment and not allowed to continue performing services for the employer. The claimant, at the request of the employer, had reconsidered her decision to leave and had affirmatively stated her desire to remain employed.

The evidence in the record establishes that when the claimant had attempted to tender her resignation on January 9, 2006 to be effective that date, the resignation was not accepted by the employer. The claimant was specifically informed by the facilities administrator, Ms. Gable, that she was "not accepting" the resignation. The claimant was instructed to "reconsider" her decision and to take one week off from work to do so. On Monday, January 16, the day specified by the employer for the claimant to return to work, Ms. Washburn returned as directed and affirmatively stated her desire to remain employed. The claimant was nevertheless discharged at that time.

In discharge cases the employer bears the burden of proof in establishing intentional disqualifying misconduct on the part of a claimant. The evidence in the record establishes the claimant was discharged because she failed to give advance notice of her previous decision to leave, because the employer disagreed with the claimant's reasons and because another employee had also chosen to leave at that time. The administrative law judge notes that the second employee who had tendered her resignation who also was not allowed to resign was not discharged. The administrative law judge, therefore, finds that the claimant's failure to provide advance notice of her initial intention to leave was not in and of itself disqualifying misconduct in this case. The administrative law judge finds that the employer's disagreement with the claimant's stated reasons for leaving also in and of itself does not establish intentional

disqualifying misconduct. In the absence of inappropriate language, slanderous statements or improper demeanor on the part of a claimant providing resignation, the act of resigning and giving reasons is not in and of itself misconduct in connection with the work. The evidence establishes that Ms. Washburn did not coerce or unduly influence Ms. Turner to relinquish her position. The administrative law judge finds that Ms. Turner was influenced to leave because the position of activity director itself would be vacated and Barbara Turner considered its effect upon her and her duties.

The question before the administrative law judge is not whether the employer has a right to discharge Ms. Washburn under these circumstances but whether the claimant's conduct is disqualifying under the provisions of the Iowa Employment Security law. While the decision to terminate Ms. Washburn may have been a sound decision from a management viewpoint, for the above-stated reasons intentional disqualifying misconduct at the time of separation has not been shown.

DECISION:

The decision of the representative dated February 7, 2006, reference 01, is affirmed. The claimant was separated under nondisqualifying conditions and is eligible to receive unemployment insurance benefits, provided that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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