

**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**

**MARCIA J DREESMAN  
1921 W 18<sup>TH</sup> ST #A-6  
CEDAR FALLS IA 50613**

**WESTSTAFF USA INC  
% EMPLOYMENT TAX CONSULTING  
440 W COLORADO ST #204  
GLENDALE CA 91204**

**RONNIE L PODOLEFSKY  
ATTORNEY AT LAW  
215 FRANKLIN ST  
CEDAR FALLS IA 50613**

**Appeal Number: 04A-UI-05734-CT  
OC: 04/25/04 R: 03  
Claimant: Appellant (2)**

**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 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Marcia Dreesman filed an appeal from a representative's decision dated May 11, 2004, reference 01, which denied benefits based on her separation from Weststaff USA, Inc. After due notice was issued, a hearing was held by telephone on June 18, 2004. Ms. Dreesman participated personally and was represented by Ronnie Podolefsky, Attorney at Law, who offered additional testimony from Diane Hulme and Sharon Hagedorn. Exhibits A, B, and C

were admitted on Ms. Dreesman's behalf. The employer participated by Andrea Bauer, Placement Consultant, and Greg Sulentic, Regional Vice President.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Dreesman was employed by Weststaff from April 23, 2002 until April 23, 2004 as a full-time placement consultant. On April 23, 2004, she had a telephone conversation with Greg Sulentic regarding an e-mail she had sent to Andrea Bauer in which she suggested she wanted to be laid off in order to collect unemployment benefits. Mr. Sulentic advised her that she either had to return to work with a commitment to make Weststaff a success or be discharged. Later that day, Ms. Dreesman notified him that she was resigning.

In September of 2003, Andrea Bauer was hired to work as a Weststaff placement consultant. Ms. Bauer would sometimes make comments regarding her personal life, including her sex life. Although she found the conversations objectionable, Ms. Dreesman would only laugh when Ms. Bauer made sexual comments. She did not complain to her manager, Mark Edwards, before he left the company. She did not complain to anyone in management until April 22, 2004. On that date, she sent an e-mail to Mr. Sulentic indicating that she needed to talk with him when he was next in the Waterloo office where she worked. She indicated that the office was not a fun place to work and that she and a couple of other employees wanted to meet with him. At that time, she did not know that her e-mail to Ms. Bauer had been shared with Mr. Sulentic. When Ms. Dreesman spoke to Mr. Sulentic on April 23, she told him some of her complaints about Ms. Bauer. He did not indicate what steps, if any, he intended to take regarding her complaints. When Mr. Sulentic told her that she needed to return to work and not be negative, she concluded that her complaints were not going to be addressed and, therefore, tendered her resignation.

Ms. Dreesman also had complaints about the manner in which Ms. Bauer dressed. She felt she dressed too provocatively for a business office by wearing tight pants and low-cut tops. Ms. Dreesman also felt that Ms. Bauer had made untrue statements about her to other employees. On one occasion, Ms. Bauer had jokingly commented that she was having computer problems because Ms. Dreesman had come in during the night and messed with the

computers. On another occasion, when an employee indicated he had been told not to report for an assignment, Ms. Bauer suggested that perhaps it had been Ms. Dreesman who told him not to report.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Dreesman was separated from employment for any disqualifying reason. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code Section 96.5(1). Ms. Dreesman had the burden of proving that her quit was for good cause attributable to the employer. Iowa Code Section 96.6(2). She quit because of complaints regarding Ms. Bauer. Her complaint regarding Ms. Bauer's attire did not present good cause for quitting. There was no evidence that her dress was in violation of any dress code in effect at the workplace. Although Ms. Dreesman may have felt the dress was not appropriate, that was just her opinion, notwithstanding the fact that that opinion may have been shared by others. The allegation that Ms. Bauer was telling untruths has not been established to the satisfaction of the administrative law judge. The administrative law judge believes that Ms. Bauer was only joking when she suggested that Ms. Dreesman was coming in at night and tampering with the computer. It was not her intent to lie when she suggested that Ms. Dreesman had told an employee not to report for work. She was only making an assumption as to what might have occurred.

The administrative law judge believes that Ms. Bauer did, in fact, discuss her sex life at work and that she did so even when not directly asked about it. The administrative law judge does not believe she had any real notice that her coworkers found her conversations offensive or in any way objectionable. The fact remains, however, that Ms. Dreesman put Mr. Sulentic on notice of her dissatisfaction with the work environment, including Ms. Bauer's sexual conversations. He was on notice of her dissatisfaction before Ms. Dreesman had any knowledge that Mr. Sulentic had the e-mail she had sent to Ms. Bauer suggesting she be laid off.

For Ms. Dreesman, the work environment constituted an intolerable working condition as contemplated by 871 IAC 24.26(4). An individual who leaves employment due to intolerable working conditions must first put the employer on notice of the work-related problems and must

advise the employer of her intent to quit if the problems are not resolved. See Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Although she put the employer on notice of her concerns, she was given no indication that those concerns were going to be addressed. The fact that the employer conducted only a limited investigation after Ms. Dreesman quit is indicative of the employer's unwillingness to address the concerns. The employer spoke with only one individual to determine what problems, if any, existed at the workplace. Because she had no assurance that her concerns with Ms. Bauer were going to be addressed, the administrative law judge concludes that Ms. Dreesman had good cause attributable to the employer for quitting. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated May 11, 2004, reference 01, is hereby reversed. Ms. Dreesman voluntarily quit her employment for good cause attributable to the employer. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/