

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

JENNIFER A BENTLEY  
681 – 25<sup>TH</sup> ST SE  
CEDAR RAPIDS IA 52403-2948

SANDRA FREESE  
KAREN MARIE JEWELRY  
5011 DUFFY DR NE  
CEDAR RAPIDS IA 52402

Appeal Number: 06A-UI-05017-HT  
OC: 04/09/06 R: 03  
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, 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(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Karen Marie Jewelry, filed an appeal from a decision dated May 3, 2006, reference 01. The decision allowed benefits to the claimant, Jennifer Bentley. After due notice was issued, a hearing was held by telephone conference call on May 25, 2006. The claimant participated on her own behalf. The employer participated by Co-Owner Sandra Freese and Human Resources Consultant Catherine Crist.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jennifer Bentley was employed by Karen Marie Jewelry from June 1999 until April 13, 2006. She was a full-time gemologist.

The employer was in the process of implementing a new performance management plan for all employees to help track sales goals and performance, and to be used in determining wages and commissions. The claimant disagreed with some of the proposed changes, which would go into effect May 1, 2006.

On April 12, 2006, Ms. Bentley gave Co-Owner Sandra Freese a note which was somewhat disjointed and shrill in tone. She expressed some of her on-going concerns and ended with a question as to whether the employer was going to address her complaints or if she would "have to look for another job." A brief discussion between the two of them resulted in the claimant becoming upset and the employer said they would continue the next day.

When Ms. Bentley arrived at work on April 13, 2006, the employer already had her personal belongings packed and waiting for her. Ms. Freese said the employer was accepting her resignation because the implementation of the performance management plan was going ahead as scheduled.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer maintains the claimant quit and it merely accepted her resignation. However, there is nothing in the record to support this contention. The claimant admittedly put in her note the question of whether the employer was going to address her concerns or if she should look for another job. The employer answered that question implicitly with a yes, that her employment was over and she would have to look for another job. This is a discharge, not a voluntary quit.

Ms. Freese declined to fully discuss the claimant's concerns and give her the opportunity to agree to stay under the conditions set out by the employer. Although the employer maintains she would have been agreeable to hearing what the claimant had to say on April 13, 2006, the administrative law judge is doubtful. Ms. Freese already had the claimant's personal belongings packed and the decision made that her employment was at an end. These circumstances are not conducive to further discussion.

The record does establish the claimant was discharged and the employer has failed to provide any evidence of misconduct. Disqualification may not be imposed.

DECISION:

The representative's decision of May 3, 2006, reference 01, is affirmed. Jennifer Bentley is qualified for benefits, provided she is otherwise eligible.

bgh/kkf