

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

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Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Demonstratives, Inc. (employer) appealed a representative's August 25, 2004 decision (reference 01) that concluded Gretchen L. Carruthers (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation occurred as the result of nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 22, 2004. David Wetsch, attorney at law, represented the employer. Sharon Fox, the office manager, testified on the employer's behalf. Bill Rector, attorney at law, appeared on the claimant's behalf with the claimant. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

Appeal Number: 04A-UI-09397-DWT
OC: 08/01/04 R: 12
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 are 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)

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 2000. The claimant worked as a full-time technical animator. Charles Fox supervised the claimant.

In November 2003 the claimant informed the employer she was moving to Illinois with her husband. Instead of losing the claimant as an employee, the employer and claimant agreed she could work from her home in Illinois. Both parties understood that eventually, the employee-employer relationship would change to a contractor relationship.

In April 2004, Charles Fox told the claimant her employment relationship would end as of April 30, 2004. The claimant talked the employer into agreeing to let her continue the employee-employer relationship until the end of May because her child was due in mid-May. The employer agreed to extend the claimant's last day of work as an employee to May 31, 2004. From the time the claimant moved to Illinois to May 31, 2004, the claimant worked and received wages for 40 hours a week work from the employer.

In April 2004 after the employer indicated the employee-employer relationship would end, the claimant understood the employer would send her a contract to sign so she would continue to work for the employer on a contract basis. The employer did not send the claimant any contract because the employer did not have any work for the claimant to do. The claimant's employment with the employer ended on May 31, 2004.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. When a claimant voluntarily quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2. However, the employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

This is a difficult case because in late November 2003, the claimant's and her husband's decision to move to Illinois initiated the mutual agreement that the claimant would continue to work for the employer as a telecommuter. After the claimant moved to Illinois in December, she worked for the employer as a telecommuting employee from January 2004 through May 31, 2004. When the employer and claimant agreed she could work as a telecommuting employee, both intended that the claimant would eventually become a contractor for the employer. Neither party agreed to the date at which this would occur. The parties left this date open and undetermined. If the employer had not allowed the claimant to continue working as a

telecommuting employee after she moved, the claimant would not have been qualified to receive unemployment insurance benefits when she moved out of the area and relocated with her husband to Illinois.

Since the employer allowed the claimant to continue her employment relationship, the reasons for the claimant's employment separation as of May 31, 2004 must be examined. First, the facts do not establish any problems with the employment arrangement between the claimant and employer from January through May 31, 2004. The employer ultimately initiated the employer's separation date by telling the claimant in April that her last day as an employee would be April 30, 2004. Even though the claimant wanted to continue with her employment relationship beyond May 31, she negotiated a later date to end the employment relationship and start working as a contractor. Since the claimant's baby was due in mid-May, the claimant asked the employer to delay this change until May 31, 2004. The employer agreed May 31, 2004 would be the claimant's last day as an employee. However, the claimant also understood she would continue to work for the employer as a contractor.

The employer's initial plan did not materialize because the employer did not have any work for the claimant to do as a contractor and never presented with her with a contract. As of April 30 or May 31, the claimant had no intention of quitting her employment. The employer initiated the employment for reasons that were not presented because the claimant's supervisor, Charles Fox, did not participate in the hearing. The facts do not establish that the claimant ended the employment relationship because the claimant committed any work-connected misconduct. Instead, the employer was satisfied with the claimant's work. The only reason the employer did not offer the claimant continuing work after May 31 was because the employer did not have any work to offer her. The evidence suggests the employer initiated the final separation because the employer did not have continuing work for the claimant to do. For unemployment insurance purposes, the claimant did not commit work-connected misconduct and her separation occurred for nondisqualifying reasons. Therefore, as of August 1, 2004, the claimant is qualified to receive unemployment insurance benefits.

This case can be compared to an employer who hires a claimant for three months or until the job is completed. If that claimant works until the job is completed or three months, the claimant is not at fault for becoming unemployed and is qualified to receive unemployment insurance benefits because the person did not commit work-connected misconduct.

DECISION:

The representative's August 25, 2004 decision (reference 01) is affirmed. The employer initiated the employment separation by determining the claimant's last day of work as an employee. While the employer had legal authority to make this decision, the claimant did not commit work-connected misconduct. Therefore, as of August 1, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b