

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

LAURYNDA S NORTHWAY
1005 PINON DR APT 5
AMES IA 50014

DEER RUN DEVELOPMENT LLC
c/o WALTERS MGMT
6151 THORTON AVE #130
DES MOINES IA 50321

JAY KAMATH
ATTORNEY AT LAW
937 – 6TH ST
NEVADA IA 50201

Appeal Number: 04A-UI-00939-DT
OC: 12/21/03 R: 02
Claimant: Appellant (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 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Laurynda S. Northway (claimant) appealed a representative's January 23, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Deer Run Development L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 18, 2004. The claimant participated in the hearing, was represented by Jay Kamath, attorney at law, and presented testimony from one other witness, Jason Northway. Jackie Klacik appeared on the employer's behalf. During the hearing, Claimant's Exhibit A was entered into evidence. 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.

ISSUE:

Did the claimant voluntarily quit and if so was it for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on July 16, 2003. She worked full time as a property manager of the employer's apartment complex. Her last day of work was December 18, 2003.

On that date the claimant called the employer's district manager, Ms. Klacik. She was very upset and reported that she could not work that day because she had left her husband, Jason Northway, a co-property manager, the night before because he had been drinking and that she did not wish to return to the apartment complex office that was right across the hall from the couple's apartment. An appointment to talk was arranged for later that day at Ms. Klacik's office.

Ms. Klacik proceeded to go to the apartment complex for a prearranged inspection of the couple's apartment. The administrative law judge takes administrative notice that there has been a prior hearing and decision entered regarding the separation of Jason Northway in 04A-UI-00709-HT. Based upon the testimony in that case of Mr. Northway and Ms. Klacik, the administrative law judge who received that testimony made findings of fact that when Ms. Klacik arrived at the apartment at approximately 9:00 a.m., Mr. Northway was still asleep and she had difficulty in awakening him, that "a little before 10:00 a.m. the claimant told Ms. Klacik his wife had left him and was not coming back, and he wanted to move out," at which time dates were discussed. He then reported he could not find his master keys and was told that if he could not find his keys, all the locks would have to be changed and he would be charged. The administrative law judge concluded as a matter of law that the claimant quit and that "his testimony that he was fired is not supported by the evidence. His version of the facts was that he discovered his masters were missing when Ms. Klacik was in his apartment and he asked when she wanted him to move out. . . . [T]here is no evidence the employer discharged him or said anything at all which could be interpreted as a discharge. [Mr. Northway's] assumption that the employer took the keys, and his assumption this meant he was fired, is not evidence of any intent on the part of the employer to fire him." These findings are binding with respect to the circumstances of Mr. Northway's separation of employment. Further, Mr. Northway's testimony in the claimant's case are consistent with the conclusion that Ms. Klacik did not say anything to the effect that he was discharged, but that he merely came to that conclusion because he could not find his keys when she was there.

After Ms. Klacik left the couple's apartment but before the scheduled meeting with the claimant, Mr. Northway called the claimant and informed her that they had been discharged. When the claimant met with Ms. Klacik, she was upset and crying. She was talking about arranging a date for moving her belongings out of the apartment. Ms. Klacik understood that the claimant was indicating that she would not be returning to the job at the apartment at all, and attempted to explain to her that at that time, she did not have any other properties needing a manager and so could not keep her on as employee. She then asked for the claimant's keys.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant asserts that she was discharged and that she did not quit. However, the only statement the claimant relies upon to establish that she was discharged was that Ms. Klacik asked for her keys. However, under the circumstances, Ms. Klacik was reasonable in concluding that the claimant was quitting and that as a result, she would need to ask for the claimant's keys. The claimant's conclusion that she was discharged is based largely upon her husband's communication with her prior to her meeting with Ms. Klacik in which he conveyed to her his mistaken assumption that they had been discharged; this misinformation undoubtedly colored the claimant's perception of her meeting with Ms. Klacik. Reference is made to a notice allegedly distributed to tenants on December 18 announcing that the claimant and Mr. Northway were no longer the managers at the apartment. It is unknown what the notice actually said, as no copy was provided, and it is unknown who prepared or distributed the notice; the employer has denied responsibility, and there are other plausible explanations. Regardless, simply a notice that they were no longer the apartment managers would not establish that they were discharged. Notably, during the meeting with Ms. Klacik, the claimant did not raise any protest to her supposed discharge or ask for a reason why she was being discharged, as would be reasonable to expect from a person who had not intended to leave her employment. The claimant's actions support that she had intended to leave her employment with the employer.

The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause. Iowa Code Section 96.6-2. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's January 23, 2004 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of December 18, 2003, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

ld/kjf