

**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**

**DARCY S SHUGART
180 CARTER ST NW
CEDAR RAPIDS IA 52405-3202**

**THE METH-WICK COMMUNITY INC
1224 – 13TH ST NW
CEDAR RAPIDS IA 52405**

**Appeal Number: 04A-UI-03591-CT
OC: 02/29/04 R: 03
Claimant: Respondent (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, 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 Separation
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

The Meth-Wick Community, Inc. filed an appeal from a representative's decision dated March 23, 2004, reference 01, which held that no disqualification would be imposed regarding Darcy Shugart's separation from employment. After due notice was issued, a hearing was held by telephone on April 22, 2004. Ms. Shugart participated personally. The employer participated by Donna Jacobi, Human Resources Director.

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. Shugart began working for the Meth-Wick Community, Inc. on July 24, 2000 as a full-time CNA. In August of 2003, she requested that she be allowed to work in the housekeeping department filling in for an individual on medical leave. She knew that the job would only last until such time as the other employee returned from leave. Ms. Shugart was in school at the time and intended to look for work in a different field upon graduation. She believed the housekeeping position would end at about the time she was done with classes. Ms. Shugart was allowed to change positions.

In mid-January, Ms. Shugart was notified that the other employee would be returning from leave and that February 4 would be her last day in housekeeping. She did not seek a return to her former job and the employer did not offer it. Ms. Shugart did not want to return to her former job as a CNA because of conflicts she had had with the supervisor. She had spoken to human resources about the problem and was told to return to human resources if she continued to have problems with the supervisor. During the one week between when she spoke to human resources and when she began working in housekeeping, Ms. Shugart did not have any further problems with the supervisor.

Ms. Shugart has received a total of \$2,121.00 in job insurance benefits since filing her claim effective February 29, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Shugart was separated from employment for any disqualifying reason. The administrative law judge concludes from all of the evidence that she was voluntarily unemployed as of February 4, 2004. She voluntarily went from the CNA position which was of indefinite duration to one in housekeeping where she knew she would only be working until an individual on leave returned. Her transfer was not requested or required by the employer. Presumably she would have still been working as a CNA as of February 4 if she had not chosen to go to housekeeping. For the above reasons, the administrative law judge concludes that Ms. Shugart was voluntarily unemployed.

Ms. Shugart had intended to seek work in a different field after her job in housekeeping ended. However, when work in a different field was not available, she never questioned the employer as to whether her former job as a CNA was available as of February 4, 2004. The administrative law judge appreciates that she had had problems with the supervisor when working as a CNA. However, those problems had been resolved after she went to human resources to complain. She had been told she could return to human resources if she continued to have problems with the supervisor. Therefore, the administrative law judge presumes that the employer would have continued to address her concerns if she had returned to the CNA position in February.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Ms. Shugart's separation was not for good cause attributable to the employer as her unemployment was voluntary. As such, benefits are denied. She has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code Section 96.3(7).

DECISION:

The representative's decision dated March 23, 2004, reference 01, is hereby reversed. Ms. Shugart is voluntarily unemployed for no good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Shugart has been overpaid \$2,121.00 in job insurance benefits.

cfc/kjf