

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**LIZ A RAHTO**

Claimant

**APPEAL NO. 08A-UI-08027-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**W & G MARKETING CO INC**

Employer

**OC: 08/10/08 R: 02  
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit  
Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.26(21) – Resignation in Lieu of Discharge

**STATEMENT OF THE CASE:**

W & G Marketing Company filed a timely appeal from an unemployment insurance decision dated August 29, 2008, reference 01, that allowed benefits to Liz A. Rahto. After due notice was issued, a telephone hearing was held September 23, 2008, with Ms. Rahto participating and presenting additional testimony by Jerry Donaldson. President Darren Dies participated for the employer. Employer Exhibits One through Eleven and Claimant Exhibit A were admitted into the record.

**ISSUE:**

Was the claimant's separation from employment an event that disqualifies her for unemployment insurance benefits?

**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: Liz A. Rahto was employed by W & G Marketing Company from January 1999 until August 1, 2008. She was a full-time employee. Jerry Donaldson was a coworker.

On or about October 5, 2007, the employer promulgated changes to its rules. Among the new rules was the following:

Should two current employees who work together or supervise each other enter into a personal, non-work related relationship, marriage, or live together common household relationship, the decision on who leaves employment may be determined by the wishes of the couple involved. If they cannot agree, the seniority rule will be enforced by the Company, and the employee with the seniority will be asked to leave.

Ms. Rahto and Mr. Donaldson entered into such a personal, non-work-related relationship. Around May 1, 2008, they informed the company. From then until August 1, 2008, they

negotiated with the company over the terms and conditions of a separation. Ms. Rahto and Mr. Donaldson determined that it would be Ms. Rahto who left employment.

### **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the separation from employment was an event that disqualifies Ms. Rahto for unemployment insurance benefits. The administrative law judge concludes that it does not.

While the evidence establishes that Ms. Rahto chose to resign, it was not a voluntary choice inasmuch as it was clear that if she did not resign, either she or Mr. Donaldson would be discharged. In implementing its policy, the employer initiated the separation, leaving to Ms. Rahto and Mr. Donaldson the choice of which one would depart the company. According to 871 IAC 24.26(21), a resignation when the only other choice was a discharge is not considered voluntary. The administrative law judge concludes that the separation must be analyzed as if it had been a discharge.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the incident leading to the discharge was a current act of misconduct. See 871 IAC 24.32(8). Leaving aside the question of whether it was misconduct for Ms. Rahto and Mr. Donaldson to enter into a personal relationship, it is clear that the employer was aware of

the relationship for three months prior to the separation. Since the employer allowed three months to elapse from the time it learned of the relationship between Ms. Rahto and Mr. Donaldson, the administrative law judge concludes that the final incident was not a current act. No disqualification may be imposed.

**DECISION:**

The unemployment insurance decision dated August 29, 2008, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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