

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

APRIL R HOWARD  
5025 HICKMAN  
DES MOINES IA 50310

NOVA CINETECH INC  
NOVA 10 AT HAYMARKET SQUARE  
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SANDWICH IL 60548

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Appeal Number: 04A-UI-05026-DT  
OC: 04/04/04 R: 02  
Claimant: Appellant (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, 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 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

April R. Howard (claimant) appealed a representative's April 21, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Nova Cinetech, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 26, 2004. The claimant participated in the hearing and was represented by Jean Pendleton, Attorney at Law. Anita Goble appeared on the employer's behalf. 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 for a good cause attributable to the employer?

#### FINDINGS OF FACT:

The claimant started working for the employer on August 30, 2002. From approximately late November through early January, she worked approximately 40 hours per week. After early January 2004, her hours were reduced to approximately one day per week (Saturdays), working as an usher in the employer's Des Moines, Iowa movie theatre. Her last day of work was February 7, 2004.

The claimant had been having trouble with one of the managers who had frequently made sexually suggestive comments and gestures to and around the claimant. She complained to the regional manager on or about January 16, 2004, who indicated he would reprimand the manager. That manager did not make any further comments or gestures to her after that, but other employees took up making comments and gestures to tease the claimant for having complained. The other manager also started making comments and being critical of the claimant. The claimant attempted to re-contact the regional manager, but he had not returned her messages.

On February 7, the claimant reported for work at approximately 7:00 p.m. At approximately 7:30 p.m., the second manager called the claimant to his office and began yelling at her about talking to new employees about her complaints with the first manager. The claimant attempted to reply that she had not been talking to anyone about the complaints, but the manager continued to yell at the claimant, saying that if she complained to the regional manager again she would be fired. The claimant indicated that she could not handle the situation any more and that she was going to leave. The second manager responded that if she left, she would no longer have a job. The claimant did leave, and attempted to contact the employer's corporate office and the regional manager again, but got no response until she spoke to the regional manager on approximately February 20. At that time he indicated that the claimant's separation was final.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit 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.

871 IAC 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The claimant has demonstrated that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. EAB, 494 N.W.2d 660 (Iowa 1993); Uniweld

Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). Benefits are allowed.

DECISION:

The representative's April 21, 2004 decision (reference 01) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/b