

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

TERESA I HALBLOM  
233 S WARD  
OTTUMWA IA 52501

EXCEL CORPORATION  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04O-UI-08478-DWT  
OC: 05/02/04 R: 03  
Claimant: Respondent (5)

**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 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)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Excel Corporation (employer) appealed a representative's June 1, 2004 decision (reference 01) that concluded Teresa I. Halbom (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A hearing was initially held on July 8, 2004 before another administrative law judge. Both parties presented testimony at the hearing. The claimant appealed the July 9, 2004 decision that disqualified her from receiving unemployment insurance benefits. The Employment Appeal Board remanded this matter to the Appeals Section because the July 8, 2004 tape recording of the hearing was inaudible.

After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing was held on August 25, 2004. The claimant and her witness, Diana Boas, participated in the hearing. The employer responded to the hearing and provided the name and phone number of the employer's witness. The employer's witness was not available for the

hearing. A message was left on the witness' answering machine. As of the date of this decision, the employer has not again contacted the Appeals Section. Based on the evidence, the arguments of the claimant, 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 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 on April 17, 2001. In the claimant's department, employees worked 3:00 p.m. to 11:30 p.m., Monday through Friday. The claimant's department did not work Saturdays and usually worked eight-hour shifts. The claimant's most recent assistant supervisor worked with her only about two months.

The claimant was on light-duty work at the end of her employment. Her work restrictions required her to work with one hand and she was to ice her hand as needed. On April 29, the employer assigned the claimant a two-handed job, which violated her work restrictions. The claimant performed the assigned job but asked to go to the nurse's office after six hours to ice her hand. The assistant supervisor told the claimant that if she went to the nurse's office, she would not be allowed to come back to her department. The claimant went to the nurse's office to ice her hand.

After the claimant iced her hand on April 29, 2003, the employer assigned her to the hambone department. The claimant understood that when an employee was "farmed" out to another department, the employee only had to work her regular department hours. On May 1, 2003, when the claimant asked if she had to work late on Friday and Saturday, the hambone supervisor reported that her assistant supervisor told him the claimant would be required to work hambone department hours, which meant working over 40 hours a week, including ten hours on Friday and on Saturday. The claimant did not work on Saturday in her regular department.

After the claimant learned the employer would not allow her to work her regular hours, as other employees did, she informed upper management she was quitting on May 1, 2003, for this reason. The claimant also quit because the employer did not allow her to displace a junior employee in her department and her assistant supervisor violated the employer's rules when he assigned her a job that violated the claimant's work restrictions. The claimant did not work for the employer after May 1, 2003.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she quits employment for reasons that do not constitute good cause attributable to the employer. Iowa Code §96.5-1. The claimant voluntarily quit her employment on May 1, 2003. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The record establishes the employer treated the claimant differently than other employees. Specifically, the claimant was not allowed to work her regular hours as another employee would

be allowed to do when the claimant was "farmed out" to the ham bone department. Also, the employer did not allow the claimant to displace a junior employee in her department. The facts presented during the August 25 hearing indicate the employer should have allowed the claimant to work her regular hours when she was assigned to work in the ham bone department even though she was on light-duty. The claimant established she quit her employment after the employer substantially altered the employment contract by treating the claimant differently than other employees. 871 IAC 24.26(1). As of May 2, 2004, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's June 1, 2004 decision (reference 01) is modified but the modification has no legal consequence. The employer did not discharge the claimant. Instead, the claimant voluntarily quit her employment on May 1, 2003 for reasons that qualify her to receive unemployment insurance benefits. As of May 2, 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