

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

BEATRICE B CLUPPER  
7324 MAPLE DR  
URBANDALE IA 50322

AMERICAN PLANNING ASSOCIATION  
122 S MICHIGAN AVE #1600  
CHICAGO IL 60603-6107

DAVID MORSE  
ATTORNEY AT LAW  
505 - 5<sup>TH</sup> AVE  
DES MOINES IA 50309

BENJAMIN ROACH  
ATTORNEY AT LAW  
700 WALNUT #1600  
DES MOINES IA 50309-3899

Appeal Number: 04O-UI-05494-AT  
OC: 02-01-04 R: 02  
Claimant: Appellant (4)

**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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

Beatrice B. Clupper filed a timely appeal from an unemployment insurance decision dated March 1, 2004, reference 01, which disqualified her for benefits upon the finding that she had voluntarily left employment without good cause attributable to the employer. After due notice was issued, a hearing was held on March 31, 2004 with Ms. Clupper participating and being represented by David Morse, Attorney at Law. The employer did not take part in that hearing. Administrative Law Judge Bonny G. Hendricksmeyer issued a decision on April 2, 2004 in appeal 04A-UI-02437-H which reversed the disqualification and allowed benefits to

Ms. Clupper. The employer appealed. In an order dated May 11, 2004, the Employment Appeal Board remanded the matter for further proceedings upon a finding that the employer had not received the notice of the March 1st hearing.

A new hearing was held on July 15, 2004 in Des Moines, Iowa. Ms. Clupper once again participated with her attorney. Her husband, Darwin Clupper, Jr., testified on her behalf. Benjamin Roach, Attorney at Law, appeared on behalf of the employer. Kip Harkness testified in person and Fritz Steiner testified by telephone from out of state. Claimant Exhibit A and Employer Exhibits 1 through 6 were admitted into evidence.

#### 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: Beatrice B. Clupper worked as executive director of the Planning and Accreditation Board starting in April 1991. In December 2003, board chairman Kip Harkness and former board chair Fritz Steiner advised Ms. Clupper that the board was adopting a transition plan which would result in a new executive director being hired by mid-year 2004. They encouraged Ms. Clupper to continue in her position until that time. Ms. Clupper indicated that she would do so.

Ms. Clupper spoke to Mr. Harkness by telephone on January 20, 2004. Ms. Clupper hoped to remain in her position until she was closer to full retirement age. Mr. Harkness reminded her that she was an employee at will who could be dismissed at any time. Mr. Harkness did not discharge Ms. Clupper, but Ms. Clupper believed that he had done so. Ms. Clupper was so emotionally shaken by the telephone call that she was hospitalized later that evening. When released from the hospital, she contacted the Human Relations Office of American Planning Association, an organization which provides personnel and payroll services for the Planning and Accreditation Board. The person with whom she spoke was surprised because Mr. Harkness had not notified American Planning Association that Ms. Clupper had been discharged. The person contacted Mr. Harkness. Mr. Harkness called Ms. Clupper on February 2, 2004 to reassure her that she had not been discharged. Ms. Clupper maintained, however, that the discharge had occurred.

As a result of Ms. Clupper's separation from employment, Ernest Guzman, the person hired to direct the transition project, was named acting executive director. The Planning and Accreditation Board will interview candidates for Ms. Clupper's former position in late July 2004. A permanent executive director is expected to be in place by September 1, 2004. Mr. Guzman is not a candidate for the permanent position.

Ms. Clupper has received unemployment insurance benefits since filing a claim effective February 1, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The question here is whether Ms. Clupper's separation from employment was a disqualifying event. Although the administrative law judge concludes that it was not, he also concludes that the timing of the separation was such that commencement of unemployment insurance benefits must be delayed.

In testimony Ms. Clupper repeated her belief that Mr. Harkness had discharged her on January 20, 2004. The administrative law judge finds it significant that Ms. Clupper never

quoted Mr. Harkness as using the direct language of discharge. She interpreted references to moving toward the door as instruction to immediately pack her belongings and await someone to escort her from the premises. From the testimony of both witnesses to the conversation, the administrative law judge finds Ms. Clupper's interpretation was unwarranted. The record shows that Mr. Harkness did not report a discharge to American Planning Association and attempted to allay Ms. Clupper's concerns in a telephone call on February 2, 2004. The administrative law judge concludes that a reasonable person in Ms. Clupper's position would not have believed that he or she was being discharged.

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 section of the Iowa Code set forth above must be understood in the context of 871 IAC 24.25(40) which provides that if an individual quits in advance of an announced scheduled layoff, benefits are withheld from the last day worked until the date of the scheduled layoff, but are allowed thereafter.

It is clear from the evidence that Ms. Clupper was to be replaced by a new executive director sometime in 2004. Because of this, the administrative law judge concludes that unemployment insurance benefits for Ms. Clupper should be merely delayed, not denied. The evidence persuades the administrative law judge that Ms. Clupper's departure on January 20, 2004 left the Planning and Accreditation Board in disarray and delayed the process of hiring Ms. Clupper's successor. Testimony in the record establishes that the employer reasonably believes that a new permanent executive director will be in place on or about September 1, 2004. Therefore, the administrative law judge concludes that benefits should be allowed as of the first Sunday of the month, September 5, 2004.

Iowa Code Section 96.3-7 requires that unemployment insurance benefits paid in error be repaid to the agency, even if the individual who has received those benefits is not at fault for the overpayment. The evidence in the record establishes that Ms. Clupper has received benefits prematurely. To that extent, she has been overpaid.

#### DECISION:

The unemployment insurance decision dated March 1, 2004, reference 01 is modified. The claimant left work prematurely after being notified of an impending layoff. Benefits are withheld through September 4, 2004. They are allowed thereafter, provided the claimant is otherwise eligible. She has been overpaid by \$5,700.00.

pjs/tjc