

**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**

**GENA WATERS
1113 – 11TH ST APT 102
WEST DES MOINES IA 50265**

**CITADEL BROADCASTING
4143 – 109TH ST
URBAN DALE IA 50322**

**Appeal Number: 04A-UI-05002-H2T
OC 04-04-04 R 02
Claimant: Respondent (1)**

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 96.5-2-a - Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 29, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 25, 2004. The claimant did participate. Susan Hermann was a witness for the claimant. The employer did participate through (representative) Scott Farkas, General Manager; Michael Hope, Director of Sales; and Sharon Beninato, Business Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a sales representative full time beginning August 1, 2003 through March 30, 2004 when she voluntarily quit her job. On March 15, 2003 the claimant was given

an ultimatum that she either meet sales goals for the month of March and April or she would be terminated. The claimant did not meet her March sales goals. The claimant resigned on March 30, 2004 because she knew she was going to be fired for not meeting her sales goals. Another coworker, Susan Hermann, was given the same ultimatum as the claimant. Ms. Hermann did not meet her sales goals and she was discharged on March 31, 2004. Mr. Farkas admits that the claimant worked to the best of her ability and tried to make her sales goals. The claimant contends she performed the job to the best of her ability.

The claimant was discharged due to allegations of meeting the employer's expectations. She had not received any warnings that her job was in jeopardy and performed the work to the best of her ability.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged and did not voluntarily quit her employment.

871 IAC 24.26(21) 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:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The claimant was given an ultimatum to meet the sales goals or be discharged. When the claimant failed to meet the sales goals, she resigned rather than be discharged. The claimant would have been discharged had she not voluntarily quit.

For the reasons that follow, the administrative law judge concludes the claimant was discharged from her employment for no disqualifying reason.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. Kelly v. IDJS, 386 N.W.2d 552 (Iowa App. 1986). Inasmuch as she did attempt to perform the job to the best of her ability but was unable to meet the employer's expectations, no intentional misconduct has been established, as is the employer's burden of proof. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code Section 96.5-2-a is imposed.

DECISION:

The April 29, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/b