

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

NICOLE M WENNING  
2200 WOODLAND AVE  
W DES MOINES IA 50266

IOWA ASSOCIATION OF REALTORS  
1370 NW 114<sup>TH</sup> ST STE 100  
CLIVE IA 50325

Appeal Number: 05A-UI-02000-S2T  
OC: 01/16/05 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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit  
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Nicole Wenning (claimant) appealed a representative's February 16, 2005 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Iowa Association of Realtors (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 21, 2005. The claimant participated personally. The employer notified the administrative law judge in writing that it chose not to participate in the hearing. The claimant offered one exhibit which was marked for identification as Exhibit A. Exhibit A was received into evidence.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 19, 2004, as a full-time education coordinator. The claimant's co-workers treated her with disrespect, discussing her appearance and choosing not to go to lunch as a group if the claimant were joining them. The claimant complained to the employer and the employer told the claimant to grow a thicker skin. Even the employer told the claimant that her co-workers hated her. The claimant told the employer she could not work under the conditions. The employer repeatedly told the claimant to grow a thicker skin. The employer told the claimant she was doing a good job and did not want the co-workers to force the claimant to quit as they had done to other workers.

On December 30, 2004, the claimant received hate mail at her home. The mail was from a co-worker and discussed the claimant's baby. The employer was angry that the claimant would receive such a document and vowed to find the person who sent it. On January 4, 2005, the employer changed his mind. He told the claimant he did not think the letter came from a current employee. The claimant offered her two-week notice. The employer terminated the claimant immediately.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.25(38) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer has not met its burden of proof to show job related misconduct. The claimant was terminated after giving notice of her resignation. The claimant is eligible to receive benefits until the date of her resignation.

The issue then becomes whether the claimant voluntarily quit without good cause attributable to the employer on January 18, 2005. For the following reasons the administrative law judge concludes she did not.

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 law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). In order to show good cause for leaving employment based on intolerable or detrimental working conditions, an employee is required to take the reasonable step of informing the employer about the conditions the employee believes are intolerable or detrimental and that she intends to quit employment unless the conditions are corrected. The employer must be allowed a chance to correct those conditions before the employee takes the drastic step of quitting employment. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The claimant informed the employer of the working conditions and that she intended to quit if the conditions were not corrected. Due to the employer's failure to correct the conditions, there cannot be a finding that she left work without good cause attributable to the employer. The claimant voluntarily quit with good cause attributable to the employer and, therefore, the claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's February 16, 2005 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. She voluntarily quit with good cause attributable to the employer. The claimant is qualified to receive benefits provided she is otherwise eligible.

bas/s