

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

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Appeal Number: 06A-UI-03650-HT
OC: 03/05/06 R: 04
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(1) – Quit
Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Pearl Management, filed an appeal from a decision dated March 24, 2006, reference 01. The decision allowed benefits to the claimant, Karen Grell. After due notice was issued, a hearing was held by telephone conference call on April 19, 2006. The claimant participated on her own behalf and was represented by Attorney Tom Schirman. The employer participated by Executive Vice President Robert Solt and Vice President Richard Phillips.

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: Karen Grell was employed with Pearl Management

from February 1, 2001 until February 10, 2006. She was a full-time transfer agent representative.

In August 2002 the company changed status, which required all agents to sign a U-4 form. Another staff member filled out the forms for all the other personnel and each agent then signed his or her own form, certifying it was correct. Ms. Grell did not read the document carefully and signed that it was correct even though the form indicated she had not filed for bankruptcy during the past ten years. She and her husband had filed for bankruptcy in 1999.

On January 16, 2006, Executive Vice President Robert Solt and Vice President Richard Phillips informed the staff that an employee had resigned due to having a bankruptcy in his past. Ms. Grell became concerned and talked to Mr. Solt, explaining she had a bankruptcy in her past and asking if she also would have to resign. She was told to check her U-4 form to see what information was on it and when she did, she found the error. Again, she asked if she would have to resign and the employer told her he would have to do some research on that issue.

The claimant told her immediate supervisor about the problem and indicated she hoped she did not have to resign. The employer's research determined that having a bankruptcy did not automatically make Ms. Grell unable to continue working. She could perform many of the same tasks, but the governmental regulations would require her to be closely supervised in all aspects of the job.

On January 24, 2006, the employer met with Ms. Grell and told her it accepted her resignation. Pearl Management did not have a large number of employees and could not spare anyone to act as a close supervisor for the claimant while she did her work. She signed the resignation and left.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is 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.

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).

The record does not support the employer's contention that the claimant quit. As far as any testimony can determine, Ms. Grell never said she quit, but only wanted to know if she would have to resign and hoped she would not. The administrative law judge cannot agree with the employer that this in any way constitutes a submission of a resignation which it then "accepted."

This is actually a discharge, as the employer made the decision not to have the claimant work for the company any longer. While Ms. Grell was negligent in not reading the U-4 form she signed more carefully, the incident occurred four years prior and there is no indication of an intent to falsify the record or deliberately misrepresent her situation. If that had been the case, she would not have brought the matter to the employer's attention in January 2006. It was a one-time error in judgment which the employer could have verified at any time after the document was signed.

The claimant was discharged, but not for any misconduct. Disqualification may not be imposed.

DECISION:

The representative's decision of March 24, 2006, reference 01, is affirmed. Karen Grell is qualified for benefits, provided she is otherwise eligible.

bgh/kkf