

**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**

**LINDA ALATABY
105 FIRST AVENUE NW
OELWEIN IA 50662**

**OMEGA CABINETS
1205 PETERS DRIVE
WATERLOO IA 50703**

**LARRY WOODS
ATTORNEY AT LAW
24 NORTH FREDERICK AVENUE
OELWEIN IA 50662**

**Appeal Number: 04A-UI-11216-AT
OC: 09/19/04 R: 04
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, 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 – Voluntary Quitting

STATEMENT OF THE CASE:

Linda Alataby filed a timely appeal from an unemployment insurance decision dated October 12, 2004, reference 01, which disqualified her for benefits. After due notice was issued, a telephone hearing was held November 2, 2004 with Ms. Alataby participating and being represented by Larry Woods, attorney at law. The employer, Omega Cabinets, did not respond to the hearing notice.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Linda Alataby was employed as a laborer by Omega

Cabinets from December 12, 2002 until she resigned May 12, 2004. She worked full time on the second shift.

Ms. Alataby married in July of 2004. The marriage deteriorated to a life-threatening situation for Ms. Alataby soon thereafter. Her estranged husband stalked her and appeared at her work place at least three nights a week. On one occasion, he physically assaulted Ms. Alataby as she attempted to get out of her car in the company parking lot. Ms. Alataby notified company management approximately seven to eight months before resigning. She asked to be moved to the first shift because her estranged husband worked the same hours. The company did not accommodate Ms. Alataby's request. Eventually, because of renewed threats of physical violence, Ms. Alataby resigned.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Alataby left employment with good cause attributable to the employer. It does.

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.

In the case Ames v. Employment Appeal Board, 439 N.W.2d 699 (Iowa 1989), the Supreme Court of Iowa considered the situation in which employees at two different plants affiliated with the same employer resigned during a labor dispute. The Court allowed unemployment insurance benefits to those employees who resigned because of violence at the picket line at the location where they worked. Other individuals were denied benefits because violence had not occurred at their work site. The Court reasoned that the resignations caused by actual violence were involuntary and thus not subject to disqualification pursuant to Iowa Code Section 96.5-1.

The evidence in this record establishes that Ms. Alataby was assaulted at the work place and that her estranged husband came to her work place approximately three times per week in the months leading up to her resignation. The evidence also establishes that the employer did not or could not accommodate Ms. Alataby's requests to be moved to a different shift. The evidence persuades the administrative law judge that Ms. Alataby's resignation was involuntary. Benefits are allowed.

DECISION:

The unemployment insurance decision dated October 12, 2004, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

shar/s