

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**SARAH HENRY**  
Claimant

**APPEAL NO: 09A-UI-03789-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RIVER CITIES READER**  
Employer

**OC: 11/23/08  
Claimant: Respondent (5)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

River Cities Reader (claimant) appealed a representative's February 27, 2009 decision (reference 02) that concluded Sarah Henry (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 16, 2009. The claimant participated in the hearing with her attorney, Leanne Tyler. Todd McGreevey appeared on the employer's behalf. During the hearing, documents were identified as Employer Exhibit One should have been identified as Claimant Exhibit A were admitted as evidence. (When the claimant sent these documents in she had pre-marked them as Exhibit 3.) Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

**FINDINGS OF FACT:**

The employer hired the claimant on April 14, 2008, to work as the employer's full-time advertising director. The employer agreed to pay the claimant \$40,000.00 a year. The claimant's job included hiring a small staff and selling advertising space in the employer's publication.

In June 2008 flooding in the region cancelled many annual events and revenue for advertising decreased. In October, the employer's competitive weekly publication folded. On October 27, the employer informed the claimant her job as ad director was eliminated. The employer offered the claimant continued employment as a senior account executive with a salary of \$25,000.00. After some negotiations, the claimant and employer agreed on October 31 that the claimant would continue working at a salary of \$30,000.00 but she was required to sell \$20,000.00 of advertising per month to continue her employment. The claimant understood she could be put

on probation and ultimately discharged in three months if she did not meet her monthly sales goals. (Claimant Exhibit A.)

The employer expected the claimant to make a minimum of 25 documented calls a day to meet her monthly sales goals. However, in early November, the claimant talked to McGreevey and understood she would not require her to document her daily calls every day because she spent a lot of extra time completing paperwork that could be used to generate sales. As a result of this conversation, the claimant understood the employer would not require her to make 25 minimum calls a day as long as met her sales goals.

In November, the manager from a major customer asked for advertising rates for special upcoming issues. The claimant wanted to meet with the customer's manager personally with McGreevey present. The manager was on vacation so a meeting could not be arranged immediately. Within a couple of days of receiving the email from the customer, the claimant scheduled an appointment to meet with the customer's manager sometime after November 21. When McGreevey asked about the status of the customer buying some advertising, the claimant indicated she was still researching the rates for the customer. McGreevey was upset with the claimant's response because he did not know a meeting had already been scheduled to meet with the customer's manager.

During this same time frame, the employer talked about going from a weekly to a biweekly publication because of financial concerns. On November 20, 2008, the employer told the claimant she could continue to work as an employee if she agreed to be paid on a straight commission. If the claimant did not accept this new offer, she would no longer have a job. The claimant did not accept the employer's offer to work on a straight commission. The claimant's last day of work was November 21, 2008.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. Since the employer offered to continue to the claimant's employment if she agreed to work on a straight commission, the facts establish the claimant ultimately ended her employment when she declined the employer's offer of continued employment as a commissioned employee.

The law presumes a claimant leaves employment with good cause when she quits because of a substantial change in the employment contract. 871 IAC 24.26(1). The employer asserted the change was necessary because the claimant failed to make a minimum of 25 calls a day. The evidence, however, indicates that while the employer wanted the claimant to make 25 calls a day, the employer's main concern was that the claimant met her monthly \$20,000.00 sales goal. When the claimant accepted a substantial reduction in her pay on October 31, the employer already had in place the consequences of the claimant's failure to meet her sales goal. (Claimant Exhibit A.) To work on a straight commission was not a listed consequence when the claimant agreed to reduce her salary by \$10,000.00 a year.

The claimant ultimately voluntarily quit her employment because the employer eliminated her \$30,000.00 salary and would only pay her a commission of her sales. This amounts to a substantial change in the employment relationship that the parties had agreed to in April and renegotiated in late October 2008. The employer asserted the reason for the change in the claimant's wage was not the fault of the employer, but as the court stated in Dehmel,

It is not necessary to show that the employer acted negligently or in bad faith to show that an employee left with good cause attributable to the employer.... [G]ood cause attributable to the employer can exist even though the employer be free from all negligence or wrongdoing in connection therewith.

Dehmel v. Employment Appeal Board, 433 N.W.2d 700, 702 (Iowa 1988). The fact the pay reduction may have been due to circumstances beyond the employer's control, under the reasoning of Dehmel, is immaterial in deciding whether the claimant left employment with or without good cause attributable to the employer. The claimant voluntarily quit this employment for reasons that qualify her to receive benefits.

In the alternative, if the employer discharged the claimant. The employer established compelling business reasons for discharging her. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8). The evidence reveals mixed signals were sent about the minimum number of calls the employer required the claimant to make in early November. Also, the employer did not realize the claimant had an appointment arranged with a major customer's manager after the manager came back from a vacation. If the employer discharged the claimant, the employer established business reasons for discharging her. The evidence does not, however, establish that the claimant committed work-connected misconduct.

Under either scenario, the claimant is qualified to receive benefits as of November 23, 2008.

#### **DECISION:**

The representative's February 27, 2009 decision (reference 02) is modified with no legal consequence. The employer did not discharge the claimant. Instead, the claimant voluntarily quit her employment when she declined to work as a commissioned employee. The claimant quit for reasons that qualify her to receive benefits. Therefore, as of November 23, 2008, she is

qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css