

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHASITI V COVERT

Claimant

APPEAL 16A-UI-12626-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-1 IOWA DENTAL PLLC

Employer

OC: 07/10/16

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the November 14, 2016, (reference 04) unemployment insurance decision that allowed benefits based upon a determination that claimant did not quit but was discharged from employment for no disqualifying reason. The parties were properly notified of the hearing. A telephone hearing was held on December 13, 2016. The claimant, Chasiti V. Covert, participated. The employer, A-1 Iowa Dental, P.L.L.C., participated through Sonal Patel, owner; and Vishal Patel, retail manager. Employer's Exhibits 1 and 2 were received and admitted into the record.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, part-time, and on-call, most recently as a dental assistant, from September 15, 2015, until June 29, 2016, when she was discharged.

When claimant was hired, Vishal Patel told her that she would work from 8:30 a.m. until 5:30 p.m. each day. Claimant testified that her actual departure time depended on the patients, as she was allowed to leave as soon as her work was done. Claimant's work day ended anywhere between 4:30 p.m. and 5:30 p.m. (Exhibit 1)

On April 10, 2016, claimant sent an email to Vishal Patel to inform him that she was beginning college the next month. Claimant stated she would have classes beginning at 5:00 p.m., so beginning May 11, she needed to leave work by 4:30 p.m. on Wednesdays. Beginning May 31, claimant told Vishal Patel, she would need to leave work by 4:30 p.m. Mondays through Thursdays. On May 18, 2016, Vishal Patel replied that he would not be giving claimant any more shifts beginning May 31. Between the time claimant sent her email to Vishal Patel and May 31, she continued to work for the employer. Claimant testified that she would leave whenever her work was done and arrive late at class if necessary. Claimant also testified that she and Vishal Patel exchanged multiple text messages about her school schedule that notified him that she did not absolutely have to depart by 4:30 p.m. each day.

After Vishal Patel stopped scheduling claimant for shifts, claimant applied for unemployment benefits. At that time, she learned that the employer had discharged her from employment. Claimant testified that she has been available for work while attending school and has made the required job contacts each week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit her employment but was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Iowa Code §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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Here, there is no indication claimant voluntarily left her employment. While claimant's schedule may have changed slightly, she continued reporting to work until the employer stopped scheduling her for shifts. The employer did not present sufficient evidence to show claimant quit her employment. Therefore, this case will be analyzed as a discharge, and the employer bears the burden to prove disqualifying misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The evidence in this case shows that the employer stopped scheduling claimant for work after she informed Vishal Patel that she would not be able to work past 4:30 p.m. Because there was unclear communication between claimant and employer about the status of the employment relationship; the issue must be resolved by an examination of witness credibility and burden of proof. Claimant maintains she had additional conversations with Vishal Patel and told him she had some flexibility with her departure time. Additionally, the time records provided by the employer show that claimant did not have to stay until 5:30 p.m. every day that she worked, indicating there was some flexibility in the schedule.

Since most members of management are considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee, it is reasonably implied that the ability to communicate clearly is extended to discussions about employment status. Claimant's decision to return to school and request that her scheduled end time be moved up one hour is not disqualifying misconduct. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The November 14, 2016, (reference 04) unemployment insurance decision is affirmed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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