

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SARAH A NEUROTH
Claimant

APPEAL NO: 19A-UI-02886-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 03/10/19
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 4, 2019, (reference 02) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on April 25, 2019. The claimant participated personally. The employer participated through Robert Graves, assistant manager. Tammy Hennick, personnel coordinator, also testified. Employer Exhibits 1-21 were admitted.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct or did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a certified pharmacy technician and was separated from employment on March 15, 2019.

In late 2018, the claimant took an approved leave of absence, covered by FMLA. She returned to work and was on intermittent FMLA until February 15, 2019, when she had exhausted job protected leave. The employer stated the claimant was informed she would be removed from the position because her continued absences had become a problem for staffing. She was working an average of 17.41 hours per week, out of her full-time schedule. Her position was eliminated and not back-filled.

The claimant was offered a position in hardware/sporting goods, which would have resulted in a \$3 per hour reduction in pay (from \$17.39/hour). The new position also would have required the

claimant to work every weekend, (versus one per month) and to expand her availability of hours, which conflicted with family obligations she had. The claimant declined the position. She was then informed by the employer she would be placed on a 30 day involuntary, unpaid leave of absence and during that period she could apply for other internal jobs. If she did not secure a position, she would be discharged at the end of 30 days. From February 15, 2019-March 20, 2019, the only position that opened was an overnight stocker position, which the claimant could not physically perform. No other positions were made available to her. Separation then formally ensued on March 20, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation is not disqualifying. Benefits are allowed, provided she is otherwise eligible.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

The first question before the administrative law judge is whether the claimant quit her job or was discharged by the employer. 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 where the employee is separated. Quitting requires an intention to terminate employment accompanied by an overt act carrying out that intent. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In the case at hand, the claimant exhausted job-protected FMLA due to personal medical conditions. She continued to perform work for her employer as a pharmacy technician until the employer told the claimant her continued need for time off due to her medical condition was becoming a problem and her position was eliminated. The employer then placed the claimant on an involuntary leave of absence for thirty days and told her she must find a new position internally in order to remain employed. The evidence presented does not support the claimant intended to end her employment, but rather the employer initiated it. For these reasons, the administrative law judge concludes that the claimant was discharged by the employer and did not choose to voluntarily quit employment.

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).

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transferred to another establishment of the same firm, or for service in the Armed Forces.

c. Discharge. A discharge is termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonest, laziness, absenteeism, insubordination, or failure to pass a probationary period.

d. Other Separations. Terminations of employment for military duty lasting or expecting to last for more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standard required.

In the case at hand, the claimant was separated based upon her failure to secure a new position with the employer while placed on an involuntary leave of absence. The only position available during the thirty day period was as a stocker, which the claimant could not physically perform. When she did not apply for the position, and thirty days expired, the employer initiated separation. The question before the administrative law judge is not whether employer can discharge the claimant for this reason, but whether the claimant is disqualified for unemployment insurance benefits for work-connected misconduct.

While the decision to separate the claimant from her employment may have been a sound decision from a management viewpoint, the evidence in the record does not establish work-related misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. The claimant was removed from her hired position due to the burden it placed on the employer and because she had exhausted "job protected" leave. The only two options available to the claimant were a position that had different duties, a reduced pay and hours that conflicted with her home matters, or alternately, a stocking position for which she could not physically perform. The employer placed the claimant on a thirty day involuntary leave of absence and then discharged her when she did not pursue either position.

The employer has the burden of providing that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is

not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record does not establish intentional work-related misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. Accordingly, the claimant is eligible to receive unemployment insurance benefits, provided that she meets all other eligibility requirements of Iowa law.

DECISION:

The April 4, 2019, (reference 02) decision is reversed. The claimant was dismissed from work on March 15, 2019 for a non-disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn