

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BUNNY T ALLER
Claimant

APPEAL NO: 15A-UI-05816-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRINCIPAL LIFE INSURANCE COMPANY
Employer

OC: 04/26/15

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Bunny T. Aller (claimant) appealed a representative's May 8, 2015 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment Principal Life Insurance Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 29, 2015. The claimant participated in the hearing and was represented by Claire Cumbie-Drake, attorney at law. The employer's representative received the hearing notice and responded by sending a statement to the Appeals Section indicating that the employer was not going to participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on January 31, 2005. Since about 2008 she worked full time as a production associate in the employer's West Des Moines, Iowa agency office. Her last day of work was March 9, 2015.

The claimant had not had any performance issues prior to 2014. In about the summer of 2014 the claimant had commented to her supervising agents that she was contemplating the possibility of retiring in the fall of 2015. Shortly thereafter the supervising agents began complaining about some of the claimant's job performance and began modifying her work schedule.

On March 4 the supervising agents gave the claimant a review with a performance plan where they indicated that her pace would have to increase without increasing her error rate. She was

going to be given until June 1 to comply with the performance plan. The agents also indicated that the only other option was to retire in the fall of 2015. On March 5 the agents changed the date at which she would be expected to return to July 17, 2015. The employer's human resources representative advised the claimant not to accept the performance improvement plan because she could not satisfy the plan, but rather to accept retirement.

On March 6 the agents removed the option for the claimant to either comply with the performance plan or retire in July, and on March 9 the agents made compliance with the performance plan mandatory, and not by June 1, but immediately. The claimant therefore concluded that she had no choice but to take retirement immediately.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a

Rule 871 IAC 24.25 provides that, 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 whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993). The claimant did not have the intent to sever the employment relationship necessary to treat the separation as a "voluntary quit" for unemployment insurance purposes; she did not have the option to continue her employment; she could either quit and retire or be discharged for failing to meet an impossible to satisfy performance plan. Rule 871 IAC 24.26(21). As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance.

The next issue in this case is then whether the employer effectively discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was her reference to considering retirement and her inability to meet the employer's performance expectations. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra. A discharge solely due to an inability to perform work to the employer's satisfaction does not constitute misconduct. Rule 871 IAC 24.32(5). The claimant's actions that led to the loss of her job were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's May 8, 2015 decision (reference 01) is reversed. The claimant did not voluntarily quit and the employer did effectively discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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