

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACEY SUMPTER
Claimant

TENCO INDUSTRIES INC
Employer

APPEAL 18A-UI-01182-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/24/17
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire
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 January 16, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on February 20, 2018. Claimant participated. Employer participated through human resources director Angela Lennie. Employer's Exhibit 1 was received.

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 began working for employer on October 4, 2016. Claimant last worked as a part-time direct support professional. Claimant was separated from employment on December 29, 2017, when she was discharged.

Claimant's doctor diagnosed her with the non-work related condition of intermittent vertigo. On December 12, 2017, claimant's doctor issued a note restricting claimant from driving more than ten miles per day. Claimant promptly submitted the note to human resources director Angela Lennie. One of the essential functions of the job as a direct support professional is transporting clients, which involves driving more than ten miles per day. Lennie stated that the only accommodation that would allow claimant to continue working would be a transfer to the night shift at her current location, which would not require driving more than ten miles per day. Unfortunately, no positions were available. Claimant asked for additional time to speak with her

doctor to see if the restriction could be modified. On December 29, 2017, Lennie and claimant spoke again. Claimant stated the restriction could not be modified. Lennie stated employer was not able to accommodate the restriction, but would call claimant if a night shift position became available. Later that day, Lennie called claimant back and stated employer could keep her on as a PRN night shift employee. Claimant declined the position and was separated from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 this case, employer made the decision to end claimant's employment as a direct support professional because it could not accommodate her work restrictions. Claimant's work restrictions were through no fault of her own and do not amount to misconduct, and therefore she is not disqualified for the separation.

Alternatively, if claimant is considered to have resigned when she declined the offer of the position working the night shift on a PRN basis, the separation still does not disqualify her from receiving benefits. Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Inasmuch as claimant's job duties, shift, and working hours would have substantially changed as a result of the proposed transfer, the change of the original terms of hire is considered substantial. Thus, to the extent claimant is considered to have resigned, the separation is still considered with good cause attributable to employer.

Because claimant is qualified to receive benefits based on her separation from employment, the issues regarding overpayment are moot and will not be discussed further in this decision.

DECISION:

The January 16, 2018 (reference 01) unemployment insurance decision allowing benefits is affirmed. Claimant was separated from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn