

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL M TORREY
Claimant

APPEAL NO: 12A-UI-01789-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVER RIDGE ESCROW COMPANY
Employer

OC: 01/01/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Nondisqualifying Employment Separation

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 13, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because her employment separation was for nondisqualifying reasons. The claimant participated in the hearing. Greg Kingery and Victor Harris appeared on the employer's behalf. During the hearing, Employer Exhibit One (four pages) was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in July 2001. She worked full time as an administrative assistant. Kingery supervised the claimant. The employer cross-trained employees.

In 2011, the claimant experienced health-related issues. At least once before August 5, 2011, the claimant indicated she was thinking about retiring at the end of the year if her health allowed her to work that long. On August 5, 2011, the employer told the claimant that due to financial reasons the employer had to lay off some employees. Even though the claimant indicated she really wanted to work until mid 2012, the employer told her she could work until the end of 2011 so she could retire and then her job would be eliminated. (Employer Exhibit One, page 3.)

On December 6, the claimant sent Kingery an email informing him that she did not plan to retire, but wanted to work until June 2012. She also informed the employer that she would be absent on December 21 for a medical procedure and would be on vacation as of December 22, 2011. Since the claimant did not have any vacation days or sick leave days available, the claimant's last day of work was December 20, 2011 instead of December 31, 2011. Other employees took over the claimant's job duties after December 20, 2011.

The claimant established a claim for benefits during the week of January 1, 2012.

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. The facts indicate that in early August 2011 the employer decided the claimant's job would be eliminated as of December 31, 2011. For unemployment insurance purposes, the employer terminated the claimant's employment by eliminating her job position.

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).

Even though the claimant talked about retiring at the end of the year, by early August 2011 she did not intend to retire at the end of the year. Based in part on their previous conversations, the employer decided the claimant's job would be the second job eliminated for financial reasons. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of January 1, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's February 13, 2012 determination (reference 01) is affirmed. The employer ended the claimant's employment by eliminating her job. The claimant did not commit work-connected misconduct. As of January 1, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css