

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CLAUDIA SCHUBERT**  
Claimant

**APPEAL NO. 14A-UI-02275-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JP SENIOR HEALTHCARE LLC**  
Employer

**OC: 02/09/14  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Claudia Schubert (claimant) appealed an unemployment insurance decision dated February 26, 2014, (reference 01), which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with JP Senior Healthcare, LLC (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 24, 2014. The claimant participated in the hearing. The employer provided a telephone number but was not available when that number was called for the hearing, and therefore, did not participate.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits or whether the employer discharged the claimant for disqualifying misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed from August 16, 2007, through February 7, 2014, when she was effectively discharged. She began work as a dietary aide and eventually was promoted to the first cook position. The claimant had to complete school to become a manager but was told that once she was certified, she would receive a raise of three or four dollars. She completed school and became the food service supervisor but the business was purchased by a new owner so the claimant only received a 60 cent raise.

As a department head, the claimant had to be available for extended hours and she did this for approximately three years. In August 6, 2013, the claimant asked to step down from management to a cook position only because she needed to get a second job. The employer asked her to continue on in the management position until a replacement could be found and the claimant agreed. She continued working another six months and finally told the employer to find her replacement because it was too hard for her to work two jobs when she was still acting supervisor. The employer hired a supervisor one week later and two weeks later, told the

claimant her resignation had been accepted. She never submitted a resignation and had no intentions of quitting her employment.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code §§ 96.5-1 and 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. The claimant was consistent in expressing her wish to continue working with the employer. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant did not exhibit the intent to quit and did not act to carry it out. Since the claimant did not have the requisite intent necessary to sever the employment relationship so as to treat the separation as a "voluntary quit" for unemployment insurance purposes, it must be treated as a discharge.

It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1). The claimant was discharged on February 7, 2014, when the employer said her resignation was accepted. Her separation from employment was not due to any misconduct on her part nor did she quit her job. The claimant is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

**DECISION:**

The unemployment insurance decision dated February 26, 2014, (reference 01), is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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