

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLENE A HALVORSON
Claimant

LUTHER COLLEGE
Employer

APPEAL 17A-UI-05607-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/23/17
Claimant: Appellant (5)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 26, 2017, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on June 28, 2017. Claimant participated. Employer participated through associate human resource director Matthew Bills. Employer's Exhibits 1 and 2 was received.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer suspend or discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time custodian. Her supervisor Ivan Hackman placed her on an involuntary unpaid leave of absence on April 24, 2017, because she had been arrested April 19, 2017, for possession of marijuana and meth paraphanlia shortly after her son moved out. She has entered a not-guilty plea in May 2017. The trial date is set for July 14, 2017. As an educational institution the employer is concerned about drug and alcohol use and whether claimant or her son had brought either substance on campus. Between April 26 and May 4, Bills attempted to call her without success. Then he sent an e-mail on May 4 (Employer's Exhibit 1 p. 1) and a letter to her residence on May 5 letter to house about having an investigatory meeting. In that letter, Bills warned that it was "critical" that they meet soon and set Friday, May 12 as a deadline or he would consider her to have resigned. (Employer's Exhibit 2 p. 1) Claimant received the letter on May 10. In the meantime, on May 8 claimant sent Bills an e-mail indicating she was out of town seeking employment and asked about her employment status. (Employer's Exhibit 1 p. 2) Bills replied that the employer was conducting an investigation about whether her employment should be continued and to discuss the circumstances of the arrest. (Employer's Exhibit 1 p. 3) On May 9 claimant e-mailed Bills authorizing him to speak to her attorney but did not provide a name or contact information. She

made a general denial of the charges. (Employer's Exhibit 1 p. 4) On May 10 she wrote Bills again expressing concern at her lack of income and indicated she could not cancel job interviews to go to Decorah for a meeting. She referred to her attorney's concerns about making any statements. (Employer's Exhibit 1 p. 5) On May 12 human resource director Marsha Wenthold sent claimant a certified letter indicating the employer considered her to have abandoned the employment because of her refusal to cooperate with the employer's investigation. Had claimant cooperated and the investigation was resolved in her favor, regardless of criminal charges, she could have returned to work. Claimant started other full-time employment in Decorah on June 26.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for job misconduct.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

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(21) 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:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

While the employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

While the employer is correct that claimant was difficult to reach and was unwilling to participate in the investigation, this does not establish claimant intended to quit her job as she expressed concern about her lack of income and when she would be able to work again. Thus, the separation was a discharge from employment and the burden of proof falls to the employer.

Iowa Code section 96.5(2)a provides:

Causes for disqualification.

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)). The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980).

Claimant was not discharged or being arrested or criminally charged. She was fired for insubordination. Inasmuch as claimant repeatedly failed to maintain reasonable communication with the employer, refused to participate in the investigation or provide her attorney's name and contact information, the employer has met the burden of proof to establish that claimant engaged in misconduct by repeated insubordination.

DECISION:

The May 26, 2017, (reference 01) decision is modified without change in effect. Claimant did not quit but was discharged from employment for job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/scn