

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HANNAH I SIMPSON
Claimant

CASEYS MARKETING COMPANY
Employer

APPEAL 21A-UI-09673-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/14/21
Claimant: Appellant (2R)**

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

STATEMENT OF THE CASE:

On April 6, 2021, claimant, Hannah I. Simpson f/k/a Hannah I. Moore, filed an appeal from the March 29, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that claimant quit her employment with the employer, Casey's Marketing Company, without showing good cause for doing so. The parties were properly notified about the hearing held by telephone on June 16, 2021. The claimant participated personally. The employer did not participate.

ISSUE:

Did the claimant quit her employment without good cause attributable to the employer, or was she discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a store manager beginning in November 2016, and was separated from employment on February 12, 2021, when she was discharged.

Claimant was responsible for inputting employees that she hired into the system so that they could clock in and be paid for their time worked. Near the end of her employment, claimant was pregnant and was dealing with pregnancy-related health concerns that caused her to be absent from work intermittently. She was beginning the process of filing for FMLA-protected leave at the time of her discharge.

Claimant had hired a new employee, but was ill after doing so. The assistant manager, Elena Constant, offered to put the new employee's information into the system so they could clock in and be paid. Claimant was not made aware of any issue with this task. Though she formerly was responsible for payroll and scheduling, since she became ill intermittently, Constant and claimant's supervisor, Brandy Anderson, had been performing those tasks on claimant's behalf. Claimant was not aware that the new employee's information had not been inputted into the system, or that the new employee was working without being clocked in. On February 12, 2021,

Anderson terminated claimant's employment for allowing the new employee to work without being clocked in.

Claimant had one warning during her employment history with the employer. In approximately August 2020, claimant hired a new employee, who it was later discovered lied on his application about his status as a felon. He had clocked in and was working when HR discovered this information. Claimant was issued discipline for the situation.

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 no disqualifying reason.

Iowa Code § 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 Code § 96.5(2)a provides:

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. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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). Such a volitional act by claimant is not present in the instant case. Claimant was discharged from employment, she did not quit voluntarily.

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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Claimant credibly testified that she had been absent from work intermittently during the period in which the new employee was working off the clock. She believed the task of inputting that employee's information into the system to be addressed by her assistant manager. While she may have displayed an isolated incident of poor judgment, the employer has not established that her conduct constituted job-related misconduct. She was also not warned in the past about similar conduct. Inasmuch as claimant was not warned about similar conduct prior to her termination, the employer has not met the burden of proof to establish that claimant engaged in misconduct. Benefits are allowed.

At hearing, claimant alleged facts suggesting that there may be a question of her ability to and availability for work. This issue is not before the administrative law judge in the instant case, and the parties have not received appropriate notice regarding such issue.

DECISION:

The March 29, 2021, (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

REMAND:

The issue of whether claimant was able to and available for work is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Alexis D. Rowe
Administrative Law Judge

June 30, 2021
Decision Dated and Mailed

ar/lj