

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CANDIE L TOW
Claimant

AVENTURE STAFFING & PROFESSIONAL
Employer

APPEAL NO. 14A-UI-05614-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/04/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 23, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 24, 2014. Claimant participated. Employer participated by Roxanne Minner.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 25, 2014. On March 27, 2014 claimant received a verbal warning after numerous days of absences. Claimant made a number of mistakes over the next month and missed a date on April 21, 2014.

On April 25, employer met with claimant to address concerns about both attendance and follow-through on job assignments. During that conversation surrounding the written warning, claimant stated that she did not agree with the written warning, and did not believe that she deserved the warning. Claimant did not sign the written warning. Claimant stated to employer, "You will need to find someone else to do the job better." Claimant did not believe this comment to be surrounding her ending her employment; rather it concerned claimant's view that she'd been trying to do a good job and had received a written warning for a couple of minor errors caused by the fact that she was alone in the office and hadn't successfully multitasked on some of the assignments given while walk-in people were coming to the office at the same time.

Claimant then went to meet with a new applicant for jobs and begin his paperwork. While waiting for him to complete his paperwork, claimant was going through and deleting her daily emails (a mix of personal and work emails). Employer saw claimant doing this and believed this not to be appropriate. She said that claimant should just pack up her things and end her employment immediately.

REASONING AND CONCLUSIONS OF LAW:

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).

Iowa Admin. Code r. 871-24.25(37), (38) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section

96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The administrative law judge holds that the evidence has failed to establish that there was a voluntary quit in this matter. In order for there to be a voluntary quit there must be the intent on the part of the claimant to no longer remain in the relationship of an employee with employer. Claimant's statement on April 25 was not indicative of an intent to quit. Rather it was an indication that she believed that she was doing her best on the job and this output still might not be good enough for employer, so employer might have to replace her. Claimant further explained that her subsequent actions of deleting emails were a part of her normal daily routine, and this was not disputed by employer.

Further, employer has not shown that there was a dismissal for misconduct. 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). Here, the employee's last act of deleting emails (both personal and business) does not constitute misconduct as employer mentioned nothing in any handbook or directive indicating that personal emails were not allowed at work.

DECISION:

The decision of the representative dated May 23, 2014, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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