IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CARIN L DIXON
Claimant

LAMONI COMMUNITY SCHOOL DISTRICT
Employer

APPEAL NO: 08A-UI-07740-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/06/08 R: 12
Claimant: Respondent (5)

871 IAC 24.1(113)a – Layoff
Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
Section 96.4-3 - Able and Available
Section 96.4-5-a – Educational Institution – Reasonable Assurance

STATEMENT OF THE CASE:

Lamoni Community School District (employer) appealed a representative's August 25, 2008 decision (reference 01) that concluded Carin L. Dixon (claimant) was qualified to receive unemployment insurance benefits in connection with her employment with the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 9, 2008. The claimant participated in the hearing. Diane Fine appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct? Is the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on October 1, 2007. The employer is an educational institution. She worked full time as a paraprofessional in the employer's Shared Vision preschool program. Her last day of work was May 28, 2008.

The Shared Vision preschool program is similar to the Head Start program, but has higher financial qualification limits. The employer operates the program under a grant from the state of Iowa. One of the requirements of the grant is that the paraprofessionals in the preschool are to be certified. There are approximately three ways for a person to become certified, but all require specific training for early young children (EYC). One of the methods of certification involves application of a person's prior college credits, another is a combination of prior college credits and additional specific training course, and the third is completely doing a special training course. Prior to the claimant being hired, Ms. Fine, the superintendent of schools and

elementary principal, had met with the claimant and had discussed the requirement that the claimant would need to be certified to continue in the position past the first year. The claimant agreed in concept, but there was not a specific determination made as to what that would require of the claimant in particular. The claimant had some education college credits she hoped might qualify, and Ms. Fine indicated that would be passed on to see if those credits were enough.

In approximately December 2007 Ms. Fine got back to the claimant and indicated that at the least in order to be certified the claimant would need to complete some additional training. The claimant responded she would check into what would be involved and would get back to Ms. Fine later. It is still unclear as to the exact degree of additional training that would have been necessary, but it apparently would have involved at least a semester of at least part time study at a local community college. The claimant lived over two hours one way from the community college. There would have been some personal expense for doing some of the work by computer as well. While she may have qualified for a scholarship for the tuition for the training course and the employer would have provided a vehicle for transportation and some time off work for the training, the claimant concluded that the travel and time involved would be too difficult. In approximately late April or early May, when Ms. Fine was checking with the preschool paraprofessionals regarding their status for the next year, the claimant informed Ms. Fine that she had concluded that she was unable to pursue the certification program at the community college, and understood that meant she could not return to work in the preschool program the next year. She indicated that she remained interested in participating as a substitute, which Ms. Fine agreed she could do. To date, the claimant has not been called in as a substitute.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a. A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c).

871 IAC 24.1(113)a provides:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
>
> a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to

carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did not have an intention to terminate the employment; rather, she wished to remain as employee as a substitute, to which the employer had agreed. Therefore, it does not appear that there has been a full separation from employment other than from the passage of time since the claimant has not been called in as a substitute.

However, to the extent there might be deemed to have been separation by a voluntary quit by the claimant's declining to attend the training at the community college, the administrative law judge would conclude that this would not be for a disqualifying reason. While the employer may have had no choice but to insist on the claimant pursuing certification if she was to return in the subsequent year, the details of what that obligation would be for the claimant were not specified at the time of her hiring and were not part of the terms of employment to which she agreed. A "contract of hire" is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a "contract of hire" to exist. When it became clear that the claimant's prior college credits would not suffice and she would need to attend at least a semester at the community college two hours away, this additional requirement was a substantial change from what the claimant had agreed to. 871 IAC 24.26(1). "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956).

In the alternative, to the extent it might be concluded that there was a discharge by the employer's declining to continue the claimant's employment since she did not pursue certification, the administrative law judge would conclude that this also would not be for a disqualifying reason. Treated as a discharge, the question would be whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue would not be whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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.

871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The sole reason the employer was forced to effectively discharge the claimant from the paraprofessional position was her failure to pursue the certification because of the time and distance involved. If the details as to how the certification requirement had been made clear to the claimant at the time of hire, her subsequent declining to pursue them might be deemed to be misconduct. However, here the claimant's declination was without prior agreement to the details of the requirement and was in good faith for understandable reasons. Holt v. Iowa Department of Job Service, 318 N.W.2d 28 (Iowa App. 1982). Although the administrative law judge can sympathize with the employer's situation insofar as being required to follow the directives of the granting agency to not allow the claimant to continue her employment without pursuing the obtaining the certificate, the employer has not provided any evidence of misconduct. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, treated as a discharge, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

To the extent the employer is questioning whether the claimant is able and available for work, it is correct that with respect to any week in which unemployment insurance benefits are sought, In order to be eligible the claimant must be able to work, is available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. However, to be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." Sierra v. Employment Appeal Board, 508 N.W.2d 719, 721 (Iowa 1993); Geiken v. Lutheran Home for the Aged, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). It is not required that the person have a particular certification for a specific position in order to be "able and available for work." The claimant has demonstrated that she is able and available to work in some gainful employment. Benefits are allowed, if the claimant is otherwise eligible.

To the extent that the availability eligibility question involves the fact that the employer is an educational institution and the claimant did file for benefits during the period between academic terms, Iowa law provides that a claimant who has wage credits earned through service in an instructional, research, or principal administrative capacity in an educational institution is only eligible for benefits based on those wage credits during the period between two successive academic years if the claimant has a contract or "reasonable assurance" that the claimant will perform services in any such capacity for any educational institution for both such academic years or both such terms. Code § 96.4-5-a. "Reasonable assurance" is any written, verbal, or implied agreement that the claimant can expect to perform services for the employer in the same or similar capacity in the next year or term which is not substantially less in economic terms and conditions that the service performed during the prior academic year or term, where that understanding has been communicated to the claimant. 871 IAC 24.51(6).

As of May 28, 2008, the only assurance the claimant had was that she was eligible to be called as a substitute in the subsequent academic year; she did not have "reasonable assurance" that she would perform services to the same extent in economic terms as she had during the 2007 – 2008 academic year.

Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's August 25, 2008 decision (reference 01) is affirmed as modified with no effect on the parties. The claimant was effectively laid off from the employer as of May 28, 2008 because of not being qualified for her prior position due to the additional requirements and not been needed to date as a substitute. She is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs