

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY M VANDYK

Claimant

APPEAL NO: 18A-UI-06237-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PETROLEUM SERVICES COMPANY LLC

Employer

OC: 05/06/18

Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting

871 IAC 24.26(1) – Voluntary Leaving – Change in Contract of Hire

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer, Petroleum Services Company LLC., filed an appeal from the May 31, 2018, (reference 01) unemployment insurance decision that allowed benefits. After due notice, a telephone hearing was held on June 22, 2018. The claimant participated personally. The employer participated through Debbie Arnold, district manager. Employer Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the benefits received. The fact-finding documents were unavailable at the time of hearing. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

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 manager and was separated from employment on April 23, 2018, when she voluntarily quit the employment without notice. Continuing work as a manager was not available.

The claimant was informed on April 23, 2018, that she would be demoted to a cashier. Her rate of pay would change from \$35,000.00 salaried per year to \$11.50 per hour. The claimant could work up to 34 hours each week. Prior to being promoted to manager, the claimant had made \$12.00 per hour as a cashier.

The claimant denied prior warnings or knowing her job was in jeopardy, or that she may be demoted. The claimant had not been given any written list of job duties to complete, or policies

associated with her management position. The employer stated the claimant was demoted due to the fact she was not doing her job, that she was not working expected shifts, which included opening the store Monday through Friday at 5:00 a.m. and working 9-10 hour shifts. The employer further stated the claimant was not doing her other managerial job duties and would not contact Ms. Arnold with questions as they arose.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,722.00, since filing a claim with an effective date of May 6, 2018. The administrative record also establishes that the employer did participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. Debbie Arnold attended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment with good cause attributable to the employer.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

While the employer is certainly entitled to make personnel decisions based upon its needs, that need does not necessarily relieve it from potential liability for unemployment insurance benefit payments. When an employer intends to demote as a disciplinary response, and changes their contract of hire, the employer must prove the events leading to the demotion would constitute misconduct. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

These principles apply also to disciplinary demotions, as was the case here. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

In this case, the employer demoted the claimant by way of changing her from manager to cashier. Her rate of pay was reduced and her shifts changed. The claimant would become a

co-worker among people she previously supervised. Her loss of supervisory, management and administrative authority and duties is considered a substantial change in contract of hire. Based on the evidence presented, the administrative law judge is not persuaded the claimant knew or should have known that she could be demoted based on her scheduling and performance of managerial duties. The employer witness lacked specific details, dates, or any documentation to support the claimant was put on notice that her job would be in jeopardy for continued behavior.

An employer may discharge or discipline an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation or discipline, employer incurs potential liability for unemployment insurance benefits related to that separation or discipline. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the demotion, it has not met the burden of proof to establish that the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge or demotion, appropriate (preferably written), detailed, and reasonable notice should be given so claimant has an opportunity to correct the conduct. Since no evidence of prior warning, performance issues or procedural missteps were provided; the reasons employer gave for the demotion appears to have been pretextual. Since the employer has not established misconduct as the reason for the demotion and the claimant would suffer at least a change in status and pay from those when hired, the change of the original terms of hire is considered substantial. Thus, the separation was with good cause attributable to the employer. Benefits are allowed.

Since the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

DECISION:

The May 31, 2018, (reference 01) decision is affirmed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible. The claimant has not been overpaid benefits. The employer is not relieved of charges.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn