

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LORI KASS**  
Claimant

**JACOLYN A SMYTH**  
Employer

**APPEAL 15A-UI-11264-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/06/15**  
**Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

Lori Kass (claimant) filed an appeal from the September 29, 2015 (reference 01) unemployment insurance decision that denied benefits based upon the determination she was discharged for engaging in conduct not in the best interest of Jacolyn Smyth (employer). The parties were properly notified about the hearing. A telephone hearing was held at 8:00 a.m. on October 23, 2015. The claimant participated on her own behalf. The employer participated through Owner and Director Jacolyn Smyth and Director Jocie Wunschel. Claimant's Exhibit A was submitted but not received into the record as it was not submitted to the agency until October 22, 2015 at 2:57 p.m. which did not provide enough time to get it to the employer before the hearing. The claimant was allowed to read into the record or reference the relevant portions of her exhibit, but the character statements were not included into the record as they were not relevant to the proceeding.

**ISSUES:**

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer 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: The claimant was employed full time as a Child Care Provider beginning on June 22, 2015, and was separated from employment on September 8, 2015. At the time she was hired, the claimant was offered the position at \$10 an hour with the understanding she would work approximately 40 hours a week depending on the needs of the child care center and would not receive medical insurance as a benefit of employment. The claimant averaged a total of 31 to 35 hours over the course of her employment.

On September 3, 2014, the claimant tendered her resignation. She quit her employment as she could no longer work at the salary she had been offered when hired and with no medical benefits. The claimant worked on September 4, 2015.

On the morning of September 8, 2015, the employer attempted to contact the claimant to tell her that she could stay home as it was overstaffed. This was a regular occurrence with employees; however, the claimant had always declined to leave early when asked to leave due to overstaffing. The claimant did not receive the employer's message prior to making her two-hour commute to work. When she arrived at work, she was told by Owner and Director Jacolyn Smyth that Director Jocie Wunschel had tried to contact her to tell her to stay home. The claimant became upset. She raised her voice. She and Smyth argued about whether the claimant would actually be working or if all of her hours were going to be cut in retaliation for submitting her resignation. The conversation ended when Smyth told the claimant she would not be needed to work the rest of her notice period. The claimant had not received warnings for insubordination in the past.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer, but was discharged for no disqualifying reason prior to the intended resignation date. Benefits are allowed for the time prior to her resignation effective date, but are denied after that date.

*Voluntary Quit on September 3, 2015.*

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 Admin. Code r. 871-24.25(13) and (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 § 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 § 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

(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 claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the

claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

The claimant knew at the time of hire that she would receive \$10 an hour and would not be offered medical insurance. Her wages and benefits did not change over the course of her employment. The claimant's decision to quit her employment, due to dissatisfaction with the wages and benefits of which she had knowledge at the time she was hired, was not for a good cause reason attributable to the employer under Iowa law. Accordingly, benefits are denied after September 17, 2015; when her resignation would have taken effect. The next issue is whether she is eligible for benefits prior to September 17, 2015.

*Discharge on September 8, 2015.*

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).

Typically, in an at-will employment environment 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, it

incurs potential liability for unemployment insurance benefits related to that separation. 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."

The conduct for which claimant was discharged was an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Additionally, the employer was not sure the claimant would have been subject to discharge for her conduct had she not already tendered resignation.

The claimant's decision to quit because she was dissatisfied with the wages and benefits of which she was aware at the time of hire was not a good cause reason attributable to the employer. Because the discharge was in response to a resignation notice and an isolated incident of insubordination, no misconduct is established. Since the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is entitled to benefits from the date of termination until the effective date of the proposed resignation.

**DECISION:**

The September 29, 2015 (reference 01) decision is modified in favor of the appellant. The claimant voluntarily left the employment without good cause attributable to the employer, but she was discharged prior to the resignation effective date. Benefits are allowed through the week ending September 19, 2015; provided the claimant is otherwise eligible. Thereafter, benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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