IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

DAVID H SHEEDER Claimant **MHD GROUP ONE LLC** **BOONE PIZZA RANCH** Employer	**APPEAL 15A-UI-00981-LT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 12/07/14** **Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the January 9, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on February 16, 2015. Claimant participated with his spouse Melissa Sheeder and son Jacob Carlton. Employer participated through owner members Howard Steil, Mel Lint, and David Barcus. Claimant's Exhibit A was received.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge 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: Claimant was, at the time of separation, employed full-time as a general manager (paid $11.00 per hour for a 48-hour week, with Sundays and Wednesdays off) of the Boone Pizza Ranch from September 8, 2014, and was separated from employment on December 8, 2014, when he was discharged. He had worked as director of group meals and shift leader (paid $9.75 per hour plus overtime averaging $10.34 per hour) since the third quarter of 2013. While general manager he had authority to hire and fire. He eventually fired Lace Williams. On Saturday, December 6 he was scheduled to work 10 a.m. to 7 p.m. but came in early at 8 a.m. to meet with Steil, Lint, Barcus and former subordinate Williams. They met with claimant to discuss employer concerns about his progress as general manager, for which, they believed, he was "not a good fit." They told him he would no longer be general manager and Williams would become the new general manager in his place. He was offered and accepted his previous position as director of group meals and shift leader at the lower rate of pay. He accepted and returned to work. While the parties' recollections are different about which days and hours claimant was to work, the employer did not specify either the status quo or changes. He left

about 7:30 p.m. because no one said he was expected to work longer than that and he had already worked nearly 11 hours that day. Before leaving he took the building keys and left them in the office. Kitchen manager Tracey McGriff asked him if he was quitting. He said he was not but was leaving the keys in the office for Williams. Since Sundays were his days off he did not report for work on December 7 but his son Carlton reported as scheduled and quit due to the change in management. He did not speak for his father. On December 8, 2014, at 9:39 a.m. Williams's first day of work as general manager, she texted claimant instructing him to return the employer's credit card, key to the safe, his and Carlton's uniform shirts, and tip money, if any. (Claimant's Exhibit A) Claimant returned his shirts to Steil, who spoke to him about sales not about his employment status. The employer had not previously warned claimant his job was in jeopardy for any reasons. Williams is still employed but did not participate.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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 Admin. Code r. 871-24.26(21) 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:
>
> (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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).
Employer clearly initiated the communication with claimant to demote him and introduce Williams as his replacement. Because there was unclear communication between claimant and employer about schedule expectations and the interpretation of both parties' statements about the status of the employment relationship; the issue must be resolved by an examination of witness credibility and burden of proof. Since most members of management are considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee, it is reasonably implied that the ability to communicate clearly is extended to discussions about employment status. Since Williams, as general manager, had the authority to fire claimant, as he had her, claimant's interpretation of her text message as a discharge was reasonable. Furthermore, that perception was bolstered by Steil's silence on the topic when he returned uniform shirts. Thus the separation was not a voluntary quitting but a discharge and the burden of proof falls to the employer.

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). Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

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. Since the employer agreed that

the general manager position was “not a good fit,” did not clarify the expected schedule during the transition from claimant to Williams, made incorrect suppositions about claimant leaving his keys for Williams, and erroneously assumed Carlton’s quitting included his father without checking, the employer has not met the burden of proof to establish that claimant engaged in misconduct. Benefits are allowed.

DECISION:

The January 9, 2015, (reference 01) decision is affirmed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

_____
Dévon M. Lewis
Administrative Law Judge

_____
Decision Dated and Mailed

dml/pjs