

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CASSIDY L HAMMER**  
Claimant

**BWW RESOURCES LLC**  
Employer

**APPEAL 21A-UI-13297-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/14/21**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

On June 3, 2021, the claimant/appellant filed an appeal from the May 26, 2021, (reference 03) unemployment insurance decision that disallowed benefits based on claimant voluntarily quitting for personal reasons. The parties were properly notified about the hearing. A telephone hearing was held on August 11, 2021. Claimant was represented by attorney Sabrina Dow. Employer participated through District Manager of Iowa, Craig Wilson. Diane Wilson from Iowa Legal Aid observed the hearing and did not participate. Exhibits A, B, C, D, E, F, G, H, I, and J were admitted into the record.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to the employer or did 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: Claimant began working for employer on August 24, 2020. Claimant last worked as a part-time server. Claimant was separated from employment on December 3, 2020.

The employer posts their work schedules a week in advance of the work week. The work week begins on Mondays and ends on Sundays. Claimant worked Thursday, December 3, 2020, and went to check her work schedule for the next week. (Exhibit D). Claimant had not been scheduled for the week and her name did not appear on the schedule as a possible server. (Exhibit D). Claimant contacted manger, Hope Eldridge, and asked why her name was taken off the schedule. Ms. Eldridge assured her that it was an accident and that her name would be put back on the schedule the following week when the new schedule was posted. The following week claimant checked the schedule again, and again her name was not on the schedule. (Exhibit E). Claimant contacted Hope again, and then contacted service manager Rich about being put back on the schedule. Both again assured her it was a mistake and she would be put back on the schedule for the following week (December 21, 2020- December 27, 2020). Claimant checked the schedule

the following week and she had not been put back on the schedule. (Exhibit F). Claimant reached out to a manager Vince via text on December 13, 2020, and asked if she was fired. (Exhibit J). Claimant never received a text or phone call back from Vince explaining why claimant was taken off the schedule. Claimant was never scheduled to work again for the employer. The employer never told the claimant why she was not scheduled to work. Claimant did not request to be taken off the schedule.

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

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

There was no evidence presented that claimant requested to be taken off the schedule and she did not intend to resign. Claimant requested to be put back on the schedule multiple times and the employer did not add her back to the schedule. Claimant did not quit but was discharged by the employer.

The next question is whether the discharge was for job-related misconduct that would disqualify her from state unemployment benefits. For the reasons set forth below the administrative law judge finds there was no evidence of job-related misconduct that disqualifies claimant from state unemployment benefits.

Iowa Code section 96.5(2)a provides:

Causes for disqualification. 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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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."

There was no evidence presented by the employer that establishes substantial misconduct. 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. Inasmuch as claimant was discharged, the employer has not met the burden of proof to establish that claimant engaged in misconduct warranting disqualification from receiving benefits. Benefits are allowed.

**DECISION:**

The May 26, 2021, (reference 03) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits withheld shall be paid to claimant.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive style with a large, looping "C" and a long, sweeping "S".

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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

August 16, 2021  
Decision Dated and Mailed

cs/mh