IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

KELLY WOODBURN Claimant **KIMBALL & BEECHER IOWA CITY PLLC** Employer	**APPEAL 21A-UI-00640-ED-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/22/20** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Timeliness

STATEMENT OF THE CASE:

Claimant/appellant filed an appeal from the November 2, 2020, (reference 01) unemployment insurance decision that denied benefits based upon claimant's voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on February 10, 2021. The claimant, Kelly Woodburn, participated personally. Ms. Woodburn was represented by her attorney, Roger Huddle. The employer, Kimball & Beecher Iowa City PLLC was represented by Brittany Blair-Broeker and Sandy Crock. Claimant's Exhibits A through H were received into the record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as clerical worker team lead. She began working for this employer on February 1, 2020 when her previous employer, Towncrest, was purchased by Kimball & Beecher. Claimant had worked for Towncrest for 26 years. Claimant's last day worked was March 17, 2020 when the clinic was closed due to Covid-19 pandemic. Claimant received the email regarding the facility closure due to the pandemic on her personal email. On May 7, claimant was informed by her former co-worker, Shannon Fields that Shannon had received an emailed letter recalling her back to work. Claimant did not receive this email. On April 29, 2020, claimant met with her former boss, Jay Davidson, who informed her that her position was being eliminated. On May 10, 2020 an email was sent to claimant offering her a position with reduced pay and different work hours as a trainee dental assistant. This email offer was not sent to claimant's personal email. Claimant never received the May 10, 2020 email offering because it was not sent to her personal email account. Instead it was sent to a work account that claimant hadn't checked since the office closed on March 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 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).

First it must be determined whether claimant quit or was discharged from employment. 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). 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).

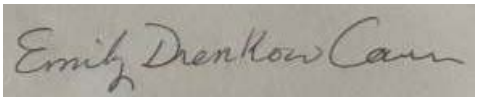
Claimant clearly had no intention to quit. Further, there was not an overt act of carrying out any intention to quit by claimant. Claimant's action in not showing up for work as directed by the May 10 letter is not an overt act of carrying out any intention to quit because she had never received the offer of employment. Previous emails regarding the shut-down were sent to claimant's personal email and received by claimant. The email regarding a return to work was sent to a work address which claimant did not see.

Because claimant was discharged from employment, the burden of proof falls to the employer to establish that claimant was discharged for job-related 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." 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, the employer incurs potential liability for unemployment insurance benefits related to that separation.

The employer provided no evidence of job disqualifying misconduct. Claimant was discharged because she didn't respond to the May 10 email of offer to work that she never received. The employer failed to meets its burden of proof to establish disqualifying job misconduct. As such, benefits are allowed.

DECISION:

The November 2, 2020, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



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Emily Drenkow Carr
Administrative Law Judge

February 25, 2021
Decision Dated and Mailed

ed/scn