

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARISSA B HOPCROFT
Claimant

LONG LINES LLC
Employer

APPEAL 15A-UI-02052-H2T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/18/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 9, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 17, 2015. Claimant participated. Employer participated through Thomas Boschen, District Manager.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer or was she discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a store manager beginning on February 12, 2013 through January 21, 2015 when she voluntarily quit after being told she would be demoted.

The claimant was promoted to store manager on August 3, 2013. Mr. Boschen had numerous conversations with her about how he thought she could improve her store performance and that of her employees. Part of what he wanted her to do was to enforce the attendance policy. The employer regularly would conduct a skip review of stores. Mr. Boschen conducted a skip review of the claimant's store in mid-January 2015. Part of a skip review is meeting with all of the employees individually. Mr. Boschen met with the employees and then with the claimant. Mr. Boschen made it clear to the claimant that going forward he expected her to hold employees accountable on attendance issues. He wanted the claimant to follow the handbook and to write people up who were late, left early or called off work too often. The claimant made it clear to him that she was not willing to hold the employees who worked for her accountable in the way that Mr. Boschen required. As the district manager Mr. Boschen was entitled to require the claimant to follow company policies. When the claimant told him that she would not enforce the

attendance policy the way he wanted, Mr. Boschen told her he was going to demote her back to a representative. The claimant did not want to be demoted, so voluntarily quit instead. It was not unreasonable for Mr. Boschen to expect the claimant to enforce the company wide attendance policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was demoted because of job misconduct and voluntarily left the employment without good cause attributable to the employer.

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).

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(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.

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. 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 claimant made it clear to the employer that she was not going to enforce the attendance policy going forward, the employer has established that her demotion was due to misconduct. Since employer has established misconduct as the reason for the demotion, claimant's decision to quit because of that was without good cause attributable to the employer. Benefits are denied.

DECISION:

The February 9, 2015, (reference 01) decision is affirmed. The claimant voluntarily quit her employment without good cause attributable to the employer after she was demoted due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs