IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

BELINDA F DEAL
Claimant

ADESA DES MOINES LLC
Employer

APPEAL NO: 09A-UI-18574-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/25/09
Claimant: Respondent (5)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Adesa Des Moines, L.L.C. (employer) appealed a representative's December 4, 2009 decision (reference 01) that concluded Belinda F. Deal (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 25, 2010. The claimant participated in the hearing. Michele Hawkins appeared on the employer's behalf and presented testimony from one witness, Jeff Lisle. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on or about July 1, 2000. As of about 2001 she worked full time but on a 32-hour schedule as a title clerk. She typically worked full days from 8:00 a.m. to 5:00 p.m. Tuesday through Thursday, and then 8:00 a.m. to 12:00 p.m. on Friday. Beginning in June 2009, she agreed to add working on Mondays two times a month on a temporary basis. Her last day of work was October 16, 2009, and she then used her accrued vacation through October 28.

In about July or August the employer told the claimant it wanted her to begin working every Monday and increase her regular schedule to 38 hours per week from 32 hours. The claimant declined, as she had personal obligations that she routinely fulfilled on her weekly day off. As a result, the employer determined to hire someone else and then let the claimant go. The employer hired someone else around September 1, and as a result let the claimant go as of October 16.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did not have the intent to sever the employment relationship necessary to treat the separation as a "voluntary quit" for unemployment insurance purposes; she did not have the option to continue her employment on its existing terms. Since she did not wish to agree to the revised terms, she could either quit or be discharged. 871 IAC 24.26(21). As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance.[1]

The next issue in this case is then whether the employer effectively discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

---

[1] Even analyzed as a "voluntary" quit, the result is the same. A substantial change in contract of hire is recognized as grounds that are good cause for quitting that is attributable to the employer. 871 IAC 24.26(1). A "contract of hire" is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a "contract of hire" to exist, nor is it pertinent that the claimant remained an "at will" employee. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). While typically it is a substantial reduction in hours which is presented as the problem, a substantial increase in the hours is equally a "change" to relationship between the parties. Even though the employer may have had a good business reason for wanting or needing the claimant's position to be available for more hours, the change in the claimant's hours which was being proposed was a substantial change in the claimant's contract of hire. Dehmel, supra. Benefits would also allowed if the separation is treated as a "voluntary" quit.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was her refusal to agree to work the additional day per week. Refusal to work additional hours is not automatically misconduct. Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa App. 1985); Boyd v. Iowa Department of Job Service, 377 N.W.2d 1 (Iowa App. 1985). Some of the factors to be considered are the history of expecting additional work hours and the employee's reason for declining. Under the circumstances of this case, the claimant's declining to change her schedule in this case was not misconduct. Further, there is no current act as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The refusal occurred at least six weeks prior to the employer's discharge of the claimant. The claimant's actions that led to the loss of her job were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's December 4, 2009 decision (reference 01) is affirmed as modified with no effect on the parties. The claimant did not voluntarily quit and the employer did effectively discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/pjs