IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SHERRIE A DOWNING
Claimant

RAINBOW LAND PRESCHOOL
Employer

APPEAL NO: 13A-UI-11142-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/01/13
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Rainbow Land Preschool (employer) appealed a representative's September 24, 2013 decision (reference 01) that concluded Sherrie A. Downing (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 24, 2013. The claimant participated in the hearing. Jesse Waller appeared on the employer's behalf and presented testimony from one other witness, Sue Martin. 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?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on August 5, 2005. Since about 2006 she worked full time as teacher in the employer's four-year-old preschool class. Her last day of work was May 31, 2013. She worked on an annual contract to work during the academic year, and she was paid through the end of the contract year, ending August 30, 2013.

On or about June 17, 2013 the employer learned that the claimant had applied for a teaching license in the state of Wisconsin. Through rumors, it heard that the claimant might possibly be considering leaving the employment and moving to Wisconsin. The employer did not discuss the possibility with the claimant; rather, it observed that the claimant had taken teaching materials home at the end of the school year rather than leaving them in the classroom, as she had done in prior years, and viewed this as confirmation that the claimant was likely to leave the

employment. The employer's board was concerned that the claimant might not be committed to staying on throughout the upcoming school year. Therefore, in a July 2 meeting, rather than preparing and presenting the claimant a contract for employment in the upcoming school year as it had done in the past, the board determined to terminate her current contract and require her to reapply so that she might demonstrate a commitment to staying throughout the upcoming school year if she chose. The board instructed the director, Waller, to convey this to the claimant. Waller sent the claimant an email on July 5 advising her that "after being advised that you have applied for Wisconsin licensing [the board has] decided to terminate your contract."

While the claimant acknowledged that she had begun to consider a possible move to Wisconsin, she had not intended to take any action to pursue that until after such time as she might be granted a Wisconsin license, which she understood could take a considerable length of time; even as of the date of the hearing in this matter she had not yet been granted a license in Wisconsin. She had viewed the possibility of a move to Wisconsin being many months or more down the road from June of 2013, and had not had any intention of ending her employment with the employer and she still had living arrangements in the area; she had taken the materials from her classroom home with her because some materials had been disposed of without her knowledge, and she wished to ensure the materials were preserved. After the claimant was informed that her employment had been terminated, she was upset with how the employer had handled the matter and chose not to reapply for employment with the employer. While she had not previously intended on making a move to Wisconsin, but as her employment had been terminated by the employer, she determined to go ahead and make the move to Wisconsin sooner rather than later.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). 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.

Rule 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 and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that she voluntarily quit by seeking a teaching license in Wisconsin. Simply considering looking for another job is not tantamount to quitting. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer 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).

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 that the claimant had started the process which might ultimately result in her moving out of state and away from the employment. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's September 24, 2013 decision (reference 01) is affirmed. The claimant did not voluntarily quit and the employer did 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/css