

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE SCHMITZ
Claimant

APPEAL NO. 06A-UI-09853-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOLDEN ARCH INC
Employer

OC: 09/03/06 R: 01
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Golden Arch, Inc. (employer) appealed an unemployment insurance decision dated October 5, 2006, reference 01, which held that Michelle Schmitz (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 23, 2006. The claimant participated in the hearing. The employer participated through Jeff Carlson, Area Supervisor. 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:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time general store manager from October 2, 1995 through September 2, 2006. She voluntarily quit her employment because she was being demoted from a store manager and being transferred to another store 40 miles away. The demotion was for disciplinary reasons since the claimant had violated labor laws. On August 6, 2006, she posted a note for employees advising them if they were late, they would be docked an hour of pay. This included employees who were only a few minutes late for work. The employer advised her that was illegal.

On July 27, 2006, the employer told the claimant she needed to suspend an employee, who happened to be the claimant's son's friend. The claimant refused to suspend the employee but reported to the employer that she had. On August 16, 2006, the claimant went into the employer's computer and altered time records to hide the fact that this employee had worked. She also told other employees to lie as to when this employee worked. Upon learning this information, the employer had to either discharge the claimant or demote her. Since she was a long-term employee, the decision to demote her was made and consequently, she needed to be moved to a different store for her own sake. The employer notified the claimant of the decision on August 24, 2006 but the claimant stated she did not know if she could do that because of the

distance to the other store. That location was the closest location of stores the employer owned. On August 28, 2006, the claimant stated that she was quitting her employment and her last day was September 2, 2006.

The claimant filed a claim for unemployment insurance benefits effective September 3, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The claimant quit her employment because she was demoted from a manager position and was being transferred to a different store. A disciplinary demotion is not equivalent to a change of contract of hire. However, the demotion must be evaluated as to whether it would constitute misconduct.

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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The same would hold true for a disciplinary demotion. The claimant was demoted due to two labor law violations, one of which she refused to follow the employer's directive. The claimant knew what was required of her and not only did she refuse to do it, but she altered the employer's time records to hide the fact that she had not suspended the employee. The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Her actions amount to disqualifying misconduct and the employer had a proper basis for demoting her.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated October 5, 2006, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,590.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/cs