

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMANTHA ROCKWELL
Claimant

FMMASON LLC
Employer

APPEAL 17A-UI-04924-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/16/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 8, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a voluntary resignation. The parties were properly notified about the hearing. A telephone hearing was held on May 26, 2017. Claimant participated. Employer participated through district manager Terry Gholson and district manager John Baugus.

ISSUE:

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 began working for employer on April 26, 2015. Claimant last worked as a full-time acting general manager. Claimant was separated from employment on April 19, 2017, when she was terminated.

Employer requires its managers to wear blue jeans and a manager shirt. Claimant was aware of this requirement.

Claimant was pregnant during 2016. Employer allowed claimant to wear yoga pants instead of blue jeans while she was pregnant. Claimant gave birth in January 2017. Claimant returned to work on March 1, 2017. Before claimant returned to work, district manager Terry Gholson informed claimant she was going to be required to wear the regular uniform when she returned. Gholson informed claimant that if she needed to wear special pants, she would need to provide a doctor's note supporting her request. Claimant did not provide employer with a doctor's note, but continued to wear spandex or knit pants upon her return to work.

On April 19, 2017, at approximately 10:00 a.m., Gholson introduced claimant to her new district manager, John Baugus. Baugus questioned claimant on the uniform requirements. Claimant was wearing black knit pants and an employer t-shirt tied in the back. Baugus

questioned why claimant was not wearing a manager's shirt and jeans. Claimant stated she had permission to wear yoga pants after giving birth. Baugus stated that claimant gave birth months ago and needed to be wearing the uniform. Claimant stated she had never been held to those standards and that it was "bullshit." Claimant clocked out and left the premises. Claimant did not return that day, but she was planning on reporting to work for her next scheduled shift. However, an acting assistant manager called claimant that afternoon and informed she was terminated and barred from entering the store.

Claimant had never been previously warned for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

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).

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 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant was terminated after she became upset with employer's uniform requirements and used profanity and walked out on her shift. This was in deliberate disregard of employer's interests, especially in light of the fact that claimant was a manager and her behavior occurred in front of subordinate employees. Employer has established claimant was terminated for misconduct.

DECISION:

The May 8, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant is deemed eligible.

Christine A. Louis
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Decision Dated and Mailed

cal/scn