IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

KAYLA MASON Claimant **KWIK TRIP INC** Employer	**APPEAL NO. 21A-UI-08776-JTT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/07/21** **Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 24, 2021, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on January 18, 2021 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 11, 2021. Claimant participated. Darcy Mahoney represented the employer. Exhibits A, B and C were received into evidence.

ISSUES:

Whether the claimant voluntarily quit without good cause attributable to the employer.
Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Kwik Trip, Inc. from 2012 until February 9, 2021. From 2014 until February 9, 2021, the claimant was the full-time Store Leader (store manager) at the employer's store in Manchester. The claimant's annual salary was $75,000.00. The claimant was required to work at least 45 hours per week. The bulk of her work hours were morning, day-shift hours. The claimant was required to work one 9:00 a.m. to 7:00 p.m. shift per week and the equivalent of one weekend per month. The claimant continued as the full-time Store Leader until February 9, 2021, when the employer discharged her from that employment position.

On January 15, 2021, District Leader Darcy Mahoney met with the claimant. Ms. Mahoney was the claimant's immediate supervisor during the last year of the employment. Ms. Mahoney had heard rumors that the claimant might be considering leaving her Store Leader position to return to college. The claimant had just commenced taking a couple of classes in anticipation of hopefully being admitted to a dental hygienist training program in August 2020, provided she had completed the prerequisite coursework by then. The claimant assured Ms. Mahoney that she was not planning to leave in the immediate future.

On January 18, 2021, the claimant sent an email message to Ms. Mahoney and to District Leader Chelle Powers. The employer had a plan in place to reorganize district leadership, which placed the claimant back under the supervision of Ms. Powers. In response to the discussion initiated by Ms. Mahoney on January 15, 2021, the claimant wrote:

> After our conversation Friday I sat down with Shay and formed a plan that we are ready to share.
> This is not an official resignation, just a heads up.
> I plan on stepping down in August of 2021 to return to school full time. We have been reviewing our options that fit our family needs. We had an idea but after speaking with my student advisor today we were able to get everything set.
> I plan on stepping down to a part time position 2hours a week prefer Jesup to waterloo area due to going to Hawkeye. This is something that we will discuss closer to August.
>
> This decision didn't come easy. I will miss my team we have done so much and gone through so much together. I have to put my family first. I have learned many things over the years that will stay with me in the career path I have chosen.

The claimant had not provided a date-certain on which she expected to separate from the employment. After the employer received the above email message, the employer decided to remove Ms. Mason from her Store Leader position. The employer concedes that the claimant had not one anything to warrant removal from her position.

On February 9, 2021, Ms. Mahoney and another district level supervisor went to the Manchester store and notified the claimant that she was being immediately removed from her Store Leader position. Though the claimant had not resigned, the employer told that claimant that the employer was accepting her resignation effective immediately. The employer told the claimant that her only option to remain with the employer was to contact District Leader Chelly Powers to see whether there was Guest Leader position or part-time position available in a different store or to immediately separate from the employment. The employer told the claimant that she would not be allowed to return to the Manchester store. The claimant contacted Ms. Powers that evening. Ms. Powers told claimant there were no open positions. Such positions would have come with a reduction in pay to a $17.00 hourly wage, as well as evening and weekend shifts.

On February 10, 2021, the claimant spoke with the human resources representative who had instructed Ms. Mahoney to tell the claimant the employer was accepting her resignation. The human resources representative reiterated the choices Ms. Mahoney had mentioned the previous day. The claimant protested the substantial reduction in pay, the significant increase in child care expenses she would incur under the changes dictated by the employer. Given the claimant's decision not to acquiesce in the detrimental changes dictated by the employer, the employment ended at that time.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *See Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 871-24.25.

Iowa Admin. Code r. 871-24.25(37) provides:

> Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. …

Iowa Admin. Code r. 871-24.26(26) 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:
>
> (12) When an employee gives notice of intent to resign at a future *date*, it is a quit issue on that future *date*. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation and *the future quit date given by the claimant*.

[Emphasis added.]

The claimant's January 18, 2021 correspondence was not a quit notice within the meaning of the law. The claimant did indeed tell the employer about her plans for August 2021, but did so only as a follow up to the employer's January 15, 2021 inquiry. In other words, the January 18, 2021, memo, misguided as it was, was essentially solicited by the employer. The memo referred to inchoate plans set seven months in the future. The memo implied that the plans were subject to change. The claimant specifically told the employer in the correspondence that she was not giving notice of a quit and that she would return to the topic as August approached. The claimant had not taken any overt act to sever the employment relationship. Rather than wait for an actual quit notice providing a date-certain for a separation, the employer elected, three weeks after the correspondence, to disingenuously assert that the claimant had resigned from the employment and to discharge the claimant from the employment.

Iowa Code section 96.5(2)(a) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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 of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board,* 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See Iowa Administrative Code rule 871-24.32(4).

The evidence establishes a February 9, 2021 discharge for no disqualifying reason. The employer concedes there was no conduct-based reason for removing the claimant from her Store Leader position. Ms. Mahoney disavows ownership of the spurious notion that the

claimant had resigned her position and points to the human resources representative as the author of that fiction.

This matter could be analyzed in the alternative as a quit in response to substantial changes in the conditions of the employment.

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.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The employer made several sudden substantial changes to the claimant's employment that had a profoundly detrimental impact on the claimant. The employer demoted the claimant, substantially reduced her pay, changed her work hours and location, and effectively imposed a significantly increased childcare expense. Thus, if one chooses to view the separation as a quit, it would be a quit for good cause attributable to the employer.

DECISION:

The March 24, 2021, reference 01, decision is reversed. The claimant was discharged on February 9, 2021 for no disqualifying reason. In the alternative, the claimant quit for good cause attributable to the employer in response to substantial changes in the conditions of the employment. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

June 29, 2021
Decision Dated and Mailed

jet/lj