

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN A HOWELL
Claimant

APPEAL NO. 09A-UI-11934-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SYNOVATE INC
Employer

OC: 07/19/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Synovate, Inc. filed a timely appeal from a representative's decision dated August 12, 2009, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 2, 2009. The claimant participated personally. The employer participated by Alison Goldfarb, Hearing Representative, and witnesses Ms. Kelly Henery and Ms. Tina Hernandez. Claimant's Exhibits One, Two and Three and Employer's Exhibit A were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Robin Howell was employed by Synovate, Inc. from May 29, 2007 and paid through July 31, 2009. Ms. Howell last held the position of part-time supervisor and was paid by the hour. Her immediate supervisor was Tina Hernandez.

Ms. Howell was separated from her employment by Synovate, Inc. after the claimant had indicated that she intended to look for new employment after her request to receive a pay increase had been denied. The claimant's job responsibilities had changed and Ms. Howell had requested that her pay be increased. Synovate believed that the duties were included in the claimant's general job description as additional duties and offered to additionally compensate the claimant by giving her two hours each week of paid time off. When informed of the decision to deny her request for increased pay, Ms. Howell indicated that she planned to look for other employment and believed that she would be successful in finding new employment within a relatively short period of time. The claimant did not indicate a final day of work or submit a resignation to the employer.

After becoming aware of Ms. Howell's dissatisfaction with the pay that she was receiving and the claimant's intention to look for other employment, a telephone conference was held between the claimant and Ms. Henery, the company's Director of Operations. During the meeting the claimant's "resignation" was accepted and the claimant was informed that her employment was ending that day and that she would be paid for an additional two weeks through July 31, 2009.

Although the claimant protested that she was not resigning and had not submitted a resignation, the claimant's employment nonetheless ended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant was discharged and did not choose to voluntarily quit employment.

Iowa Code section 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.

The evidence in the record clearly establishes that Ms. Howell did not submit a resignation nor set a final day of employment. Based upon dissatisfaction with the employer's management decision to deny an increase in pay, Ms. Howell had indicated that she planned on seeking new work in the future and surmised that she would be successful in finding a new job within a short period of time. Based upon the claimant's position with the company, Synovate, Inc. made a management decision to end the claimant's employment paying her two weeks' notice period through July 31, 2009.

The act of requesting a pay increase or indicating the desire to seek other employment is not in and of itself disqualifying misconduct. The evidence does not establish that the claimant was insubordinate or acted in any manner that could lead the employer to believe that the claimant's conduct showed a willful disregard for the employer's interests or standards of behavior. The claimant was exercising her right to disagree with management's decision and exercising her right to indicate to the employer that she might be leaving employment at some time in the future.

The employer has the burden of proof in this matter. See Iowa Code 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not be serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

For the reasons stated herein the administrative law judge concludes that the claimant was discharged for the convenience of the employer for no disqualifying reason. Benefits are allowed, providing the claimant has met all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated August 12, 2009, reference 01, is affirmed as modified. Claimant was discharged effective July 31, 2009 for no disqualifying reason. Benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs