ISABEL M SANCHEZ
Claimant

SPIRIT LAKE SILVER & GOLD INC
Employer

APPEAL 18A-UI-08966-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/05/18
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the August 20, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 13, 2018. Claimant participated and testified. Employer participated through Bookkeeper Sara Anderson and Manager Rhonda Ringgenberg. Employer's Exhibits 1 through 5 were received into evidence.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 11, 2017. Claimant last worked as a full-time sales associate. Claimant was separated from employment on August 2, 2018, when she was discharged.

On July 31, 2018, one of claimant's coworkers, Cecilia, became upset with her and instigated a confrontation. Claimant repeatedly asked Cecilia to leave her alone and let her do her work, but she would not relent. When a customer came in Cecilia asked claimant if she would go upstairs with her to continue the argument, but claimant declined and stayed to assist the customer.

When the customer left claimant went and told the manager, Gary, what was going on. Gary then spoke with Cecilia, which angered her even more. Cecilia again approached claimant and attempted to further antagonize her. Claimant would respond to defend herself, but testified she did nothing to further provoke the situation. Things calmed down after a half hour or so and Gary went to lunch. Fifteen to twenty minutes after Gary left Cecilia started to argue with claimant again and would not stop despite numerous requests to do so. Claimant eventually told Cecilia if she did not stop, she was going to call the police. (Exhibit 2).

The argument went on to the next day, when Cecilia made several derogatory posts on social media about the claimant. (Exhibit 3). Upon seeing the posts claimant sent a text message to Ringgenberg informing her that she could not take this treatment at work and would be putting in her two-week notice. (Exhibit 4). Ringgenberg sent a message back telling claimant to take a break and wait until she could speak to both employees before she made a permanent decision. Claimant, following this advice, reported what happened to the manager on duty. The manager told claimant to wait in the office until Cecilia was gone and then sent Cecilia home.

On August 2, 2018, when Riggenberg returned to the office, she met with claimant. Claimant told Riggenberg that she had thought about things and did not want to resign. Ringgenberg informed claimant that it was too late and the decision had been made to accept her resignation and separate claimant from employment based on the last two days. Ringgenberg testified this decision was made because, even though claimant was not the instigator, there was a fear of further confrontations outside the business and that such confrontations might damage the reputation of the business.

The claimant filed a new claim for unemployment insurance benefits with an effective date of August 5, 2018. The claimant filed for and received a total of $1,605.00 in unemployment insurance benefits for the weeks between August 5 and September 8, 2018. Both the employer and the claimant participated in a fact-finding interview regarding the separation on August 17, 2018. The fact-finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code §96.5(1) provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); *see also* Iowa Admin. Code r. 871-24.25(35). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a

discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Here, the claimant indicated to the employer that she was intending on submitting her two week notice. The employer rejected this and asked that she wait to make any decisions, which claimant agreed to do. The next day claimant clearly told the employer she did not wish to resign, but was told by the employer she was being separated from employment. As such, the separation is a discharge.

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.
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> 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 of proof in establishing disqualifying job misconduct. *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). 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden

of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant was discharged following an incident involving a disagreement with her coworker. The evidence shows claimant was not the instigator and made reasonable attempts to retreat from and defuse the situation. The employer has not established the claimant was discharged from employment for any willful or deliberate misconduct. As such, benefits are allowed. The issues of overpayment and participation are moot. In the alternative, even if claimant did voluntarily resign, she has established the work environment was intolerable and benefits would be allowed under Iowa Administrative Code rule 871-24.26(4).

DECISION:

The August 20, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. The issues of overpayment and participation are moot.

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Nicole Merrill
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs