

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LATOYA S WRIGHT

Claimant

APPEAL 17A-UI-04105-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 03/26/17

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 11, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 8, 2017. Claimant participated. Employer participated through area supervisor Blaine Miller and store manager Scott Miller.

ISSUE:

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?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a second assistant manager from October 7, 2013, and was separated from employment on March 24, 2017.

The employer has a written off duty conduct policy that provides for immediate discharge if an employee engages in illegal activity that does not conform to the employer's standards. The employer also has a written drug and alcohol policy. The drug and alcohol policy provides for uniform standards of actions that are taken in case of a confirmed positive test/or refusal to submit to testing. The employer has an employee assistance program. Claimant was aware of the employer's policies.

On March 15, 2017, claimant was arrested at her residence for possession of a controlled substance (marijuana). Claimant did not report her arrest to the employer. Sometime after claimant's arrest, Blaine Miller was notified she had been arrested and he confirmed this information on Iowa Courts Online. Claimant has pled not guilty to the charge and the charge is still pending.

Claimant's last day of work was on March 23, 2017. On March 24, 2017, Blaine Miller and Scott Miller met with claimant regarding her arrest. During the meeting, Claimant admitted she had been charged with possession of marijuana. Blaine Miller asked claimant if she could pass a

drug test and she responded no. Claimant told the employer that she had smoked marijuana on March 19, 2017. During the meeting, the employer informed claimant that if she did not resign, she would be discharged. Claimant gave the employer her resignation, effective immediately. The employer accepted claimant's resignation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code section 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.

Iowa Admin. Code r. 871-24.26(21) 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:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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).

On March 24, 2017, the employer initiated the communication with claimant to discuss her March 15, 2017 arrest for possession of marijuana. Furthermore, during the meeting, the employer clearly indicated to claimant that if she did not resign she was going to be fired. Therefore, because the employer informed claimant that her employment was ending and she was forced to either resign or be discharged, this separation is considered a discharge and the burden of proof falls to the employer.

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.

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 proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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). The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer's expectation that employees remain drug free in the workplace and be able to pass a drug test is reasonable. The employer has presented substantial and credible evidence that on March 24, 2017 claimant violated a known work rule when she admitted she would not be able to pass a drug test after having smoked marijuana on March 19, 2017.

The employer has a reasonable expectation of a drug free work place and claimant's admission that she could not pass a drug test is contrary to the best interests of the employer. Claimant's violation of the known work rule constitutes misconduct, even without prior warning. Benefits are denied.

DECISION:

The April 11, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs