IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JOSHUA J REYNOLDS Claimant **ALLEN MEMORIAL HOSPITAL** Employer	**APPEAL 18A-UI-02629-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/04/18** **Claimant: Appellant (2)**

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 February 23, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 3, 2018. Claimant participated. Employer participated through vice-president of human resources Steven Sesterhenn and executive director of support services Teri Ettelson. Claimant Exhibit A was admitted into evidence with no objection.

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 first shift supervisor in the environmental services department from January 17, 2017, and was separated from employment on February 3, 2018.

On December 26, 2017, claimant sent Ms. Ettelson an e-mail asking about the possibility of changing positions. Claimant Exhibit A. Claimant asked Ms. Ettelson "if it would be possible for [him] to step down from [his] supervisor role and have [his] job reclassified as EVS Associate." Claimant Exhibit A. Claimant told Ms. Ettelson: "I care very much for this hospital as well as the department and I have no desire to leave either." Claimant Exhibit A. Claimant also told Ms. Ettelson: "I am sure that this is a very uncommon request[and I would understand if you were unwilling or unable to grant this], but I still feel that I have a lot to offer the hospital and EVS." Claimant Exhibit A. Ms. Ettelson testified that she interpreted claimant's e-mail to mean he was resigning if the employer did not grant his request to step down to a different position.

After Ms. Ettelson received claimant's e-mail, she forwarded a copy to Mr. Sesterhenn. Around December 28, 2017, claimant met with Ms. Ettelson regarding his e-mail. Ms. Ettelson told claimant that the employer would not let him step down from his supervisor position and since

he did not want the supervisor position, the employer was going to treat it as his resignation. Claimant told Ms. Ettelson that he did not intend for his e-mail to be considered a letter of resignation. Claimant told Ms. Ettelson he wanted to remain at the employer. Ms. Ettelson told claimant that his last day would be February 3, 2018.

The next week, claimant sent an e-mail to the CEO of the hospital to see if the employer's decision could be reconsidered. Shortly after claimant sent this e-mail, he met with the vice-president of the hospital (COO). The COO informed claimant that the employer would not change its decision. The employer let claimant work until February 3, 2018. Claimant did not have any disciplinary warnings during his employment.

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. Benefits are allowed.

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

While the employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

Although claimant sent Ms. Ettelson an e-mail on December 26, 2017 exploring the possibility of to changing positions, he did not inform her that he would resign if the employer would not allow him to change positions. *See* Claimant Exhibit A. Claimant specifically asked Ms. Ettelson "*if it would be possible* for [him] to step down from [his] supervisor role and have [his] job reclassified as EVS Associate." Claimant Exhibit A (emphasis added). Claimant also specifically told the employer in the e-mail: "I care very much for this hospital as well as the department and *I have no desire to leave either*." Employer Exhibit 1 (emphasis added). Furthermore, after Ms. Ettelson informed claimant that she interpreted his e-mail as a resignation because the employer was not going to accommodate his position change request, he contacted the CEO of the hospital and met with the COO to try to get the employer to reconsider its interpretation.

Claimant's e-mail and actions during and after his conversation with Ms. Ettelson clearly show he did not intend to end his employment relationship with the employer. Since the employer

took claimant's e-mail request to change positions as a resignation and would not reconsider when he attempted to clarify his intention, his interpretation of the employer's decision to end his employment as a discharge was reasonable and the burden of proof falls to the employer.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

> **(4)** *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). 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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as claimant's e-mail merely asked about the possibility of changing positions, the employer has not met the burden of proof to establish that claimant engaged in disqualifying job misconduct. Furthermore, the conduct (asking about the possibility of changing positions) for which claimant was discharged was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The February 23, 2018, (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits withheld shall be paid to claimant.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs