

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE M PINCHECK
Claimant

APPEAL NO. 17A-UI-08214-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 07/16/17
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Nicole Pincheck (claimant) appealed a representative's August 3, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 30, 2017. The claimant participated personally. The employer participated by Angela Boge, Area Supervisor. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 25, 2017, as a part-time store employee. The claimant signed that she knew where the employer's handbook was physically located. The employer did not give the claimant her own handbook or time during her shift to read the handbook.

On June 9, 2017, the claimant was having a cigarette outside of her workplace waiting for her shift to begin when an employee became angry and hit her about the face and head. The claimant called the police and the co-worker fled. The claimant gave a statement to the police and pictures were taken of the claimant's black eye. The co-worker returned and gave a statement. The co-worker had no injuries, had not called the police but falsely told the police the claimant hit her. The co-worker made threats of future harm to the claimant after the assault.

On June 10, 2017, the claimant was supposed to work. She called the employer and said she would not be in because of her black eye from the co-worker's assault. The employer told her the co-worker was at work. The claimant said she could not work at the same location as the co-worker and asked if something could be done. The employer said she would talk to the area supervisor. The claimant told the employer she would have to quit work.

Continued work was not available had the claimant not quit. The employer was instructed to terminate both employees on June 12, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer she intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. *Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant*, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer of the intolerable working conditions. The claimant subsequently quit due to those conditions. Under these conditions, the claimant is eligible to receive unemployment insurance benefits, provided she is otherwise eligible.

In the alternative, the administrative law judge concludes the claimant was not discharged for misconduct.

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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Off premises during lunch hour, claimant assaulted co-worker for alleged rumors spread by co-worker. Court of Appeals allowed benefits, noting lack of evidence of negative impact at work place plus fact that claimant finished the day before being discharged. *Diggs v. Employment Appeal Board*, 478 N.W.2d 432 (Iowa App. 1991). The employer terminated the claimant for her behavior prior to the start of her shift on June 9, 2017. The employer was not able to provide any evidence of unprofessional behavior or negative impact in the workplace. In addition, the employer kept the claimant on the schedule for June 10, 2017. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's August 3, 2017, decision (reference 01) is reversed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs