

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JANE M BAULER
Claimant

APPEAL NO. 19A-UI-02331-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

OC: 02/17/19
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 6, 2019, reference 01, decision that held the claimant was eligible for benefits provided she met all other eligibility requirements that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on February 1, 2019 for good cause attributable to the employer. After due notice was issued, a hearing was held on April 3, 2019. Claimant Jane Bauler participated. Brian Clark represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUES:

Whether the claimant voluntary quit for good cause attributable to the employer.

Whether the claimant was discharged for misconduct in connection with the employment.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jane Bauler was employed by Kum & Go, L.C. as a full-time Food Service Manager/Kitchen Manager until February 1, 2019, when she voluntarily quit the employment. Ms. Bauler's work hours in the management position were 4:30 a.m. to 12:30 p.m., Monday through Friday. Ms. Bauler's pay in the management position was \$14.42 per hour.

On January 16, 2019, the employer notified Ms. Bauler that the employer was demoting Ms. Bauler to a Store Associate position effective February 1, 2019. The employer's decision to demote Ms. Bauler followed food quality audits conducted by a third-party vendor and that resulted in unsatisfactory audit scores. The failing audit scores arose from issues with failure to consistently complete the food temperature logs and failure to remove outdated food from the retail shelf. The employer is unable to provide the details of the deficits.

In connection with the demotion, Ms. Bauler would no longer be guaranteed full-time employment. In connection with the demotion, Ms. Bauler's assigned shifts would be 3:00 p.m. to 11:00 p.m. or 7:30 a.m. to 3:00 p.m. The employer told Ms. Bauler that the employer would be decreasing her pay from \$14.42 per hour to \$12.15 per hour. Within a few days of being notified of the demotion and associated changes, Ms. Bauler notified the employer that she would not acquiesce in the changed conditions of the employment and would be quitting effective February 1, 2019.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

Iowa Admin. Code r. 871-24.26(1) 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:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The evidence in the record establishes a voluntary quit for good cause attributable to the employer. Ms. Bauler quit was in timely response to multiple substantial changes in the conditions of the employment. These substantial changes included the demotion, the pay cut, the loss of full-time status, and the change in work hours.

Given the context of the demotion, the administrative law judge has considered, in the alternative, whether Ms. Bauler was discharged from her manager position for misconduct in connection with the employment.

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

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on

which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4).

The weight of the evidence in the record does not establish misconduct in connection with the employment. The employer presented sufficient evidence to establish a legitimate concern about the temperature logs and out-of-date food. However, the employer was unable to provide sufficient detail regarding the conduct of Ms. Bauler to prove, by a preponderance of the evidence, that she demonstrated a willful and wanton disregard for the interests of the employer.

Ms. Bauler is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The March 6, 2019, reference 01, decision is affirmed. The claimant voluntarily quit the employment on February 1, 2019 for good cause attributable to the employer. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs