

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENISE C SUGHROUE
Claimant

COMPASS ONE LLC
Employer

APPEAL 19A-UI-08780-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/20/19
Claimant: Appellant (5)**

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

STATEMENT OF THE CASE:

On November 7, 2019, Denise C. Sughroue (claimant) filed an appeal from the November 1, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with Compass One, LLC (employer) due to dissatisfaction with the work environment. The parties were properly notified about the hearing. A telephone hearing was held on December 3, 2019. The claimant participated personally. The employer participated through Louis Lynxwiler, Food Service Director. No exhibits were admitted into the record.

ISSUE:

Did the claimant voluntarily leave employment with good cause attributable to the employer or did the 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: The claimant was employed full-time as a Grill Cook beginning on August 14, 2018, and was separated from employment on October 11, 2019. The employer contracts with a client to provide cafeteria services to the client's employees. The claimant reported to Louis Lynxwiler, Food Service Director, who reports to Darren Pulley, Regional Manager.

Toward the end of the claimant's shift on October 11, a customer asked her for a hamburger. There were no hamburgers already grilled, so the claimant told the customer she would make her one. The claimant went back to the grill, threw hamburgers onto the grill, and muttered to herself. Pulley observed the claimant's conduct and determined she had displayed a bad attitude.

At the end of her shift, Pulley and Lynxwiler met with the claimant to discuss her bad attitude. Pulley started to talk to the claimant about her attitude and discuss the issue he had observed in the kitchen. The claimant got upset, stated she was leaving, and left the room to gather her

personal things. She was met by Pulley and Lynxwiler at the exit and they asked for her badge. The claimant handed over her badge without comment. Had the claimant not walked out of the meeting that day, there was continuing work available to her.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5 provides, in relevant part:

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.

...

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. 871-24.25 provides, in relevant part:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

...

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

...

(27) The claimant left rather than perform the assigned work as instructed.

(28) The claimant left after being reprimanded.

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 unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left her employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It 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 there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* The findings of fact show how the disputed factual issues were resolved.

In this case, the claimant did not say she quit and the employer never told the claimant she was discharged. The claimant did admit to saying she was leaving; however, her shift had ended for

the day when she was brought into the meeting. The claimant did not voluntarily hand over her badge, but was asked for it by management, which a reasonable employee could conclude meant they were discharged. The employer has not met the burden of proof to establish that the claimant expressed a clear intention to end her employment or engaged in an act to sever that relationship. Therefore, the case must be analyzed as a discharge.

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 the 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). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v. Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The employer has an interest in being able to coach employees on conduct it determines is not in its best interest. The claimant had displayed a negative attitude at work because she was tired and frustrated. The employer attempted to coach the claimant about her negative attitude. Instead of engaging in the process, the claimant continued to display a negative attitude and was insubordinate when she left the meeting. The claimant's conduct was a deliberate disregard of the employer's interest as well as an intentional violation of the conduct an employer has a right to expect of its employees. This is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The November 1, 2019, reference 01, unemployment insurance decision is modified with no change in effect. The claimant did not voluntarily quit but was discharged from employment due to job related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible



Stephanie R. Callahan
Administrative Law Judge

December 6, 2019
Decision Dated and Mailed