

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODY L WHITMORE
Claimant

APPEAL NO: 12A-UI-04727-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOUTHEASTERN COMMUNITY COLLEGE
Employer

OC: 03/18/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Jody L. Whitmore (claimant) appealed a representative's April 12, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Southeastern Community College (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 16, 2012. The claimant participated in the hearing and presented testimony from one other witness, Debra Hedger; two other witnesses were available on behalf of the claimant but did not testify. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on or about April 15, 2004. She worked full time as director of the upward bound program designed to assist high school students. Her last day of work was March 20, 2012.

A new supervisor was hired in November to supervise the center in which the claimant's program operated. The new supervisor had a reputation as someone who would get rid of persons under her supervision that she did not like. The claimant found that she was not being given any direction or communication from the new supervisor as to the operation of the program. In about February 2012 another assistant director of one of the other two programs within the center was forced to leave the employment, having to choose between being fired or resigning.

On or about March 6 the claimant had a meeting with the new supervisor and the human resources director in which she was told a number of the things she was doing were not being done as the new director wished; she was told there would be a follow up meeting in a couple weeks and that if the issues were not resolved, she would be discharged. The follow up meeting occurred on March 20. During the meeting the claimant showed that she had addressed the issues raised during the March 6 meeting; however, the employer indicated it was still not satisfied with how she was performing her job duties. The claimant had consulted with the union representative, Hedger, and Hedger accompanied the claimant to the meeting. In anticipation that the meeting could go along the same direction as what had happened with the other assistant director the prior month, the claimant and Hedger had prepared a resignation letter in anticipation of being given an ultimatum. After the employer expressed its concerns on how the claimant's job performance was still inadequate, Hedger asked the employer if there was anything the claimant could do at that point to keep her job. The employer responded that there was not, so the claimant offered her resignation in lieu of being discharged. The employer accepted the resignation effective immediately. The claimant's job was not available to her had she not tendered her resignation.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993). The claimant did not have the intent to sever the employment relationship necessary to treat the separation as a "voluntary" quit for unemployment insurance purposes; she did not have the option to continue her employment, rather, she could either quit or be discharged. 871 IAC 24.26(21); *Peck v. Employment Appeal Board*, 492 N.W.2d 438 (Iowa App. 1992). As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance.

The determinative issue in this case then becomes whether the employer effectively discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was dissatisfaction with the claimant's job performance under the new supervisor. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra. There is no evidence the claimant intentionally failed to perform her duties to the best of her abilities. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. The claimant's actions that led to the loss of her job were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's April 12, 2012 decision (reference 01) is reversed. The claimant did not voluntarily quit and the employer did effectively discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs