

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUADA MUJAKIC
Claimant

APPEAL NO. 09A-UI-11912-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

OC: 02/22/09
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 14, 2009, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on September 24, 2009. Claimant Suada Mujakic participated. Rick Wood, Human Resources Manager, represented the employer. Bosnian-English interpreter Karmela Loftus assisted with the hearing. Exhibit One was received into evidence.

ISSUE:

Whether Ms. Mujakic separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Suada Mujakic was employed by Beef Products, Inc., as a full-time janitor from May 2006 until June 21, 2009. Ms. Mujakic's native language is Bosnian. Ms. Mujakic's English skills are limited and she requires the assistance of an interpreter.

On June 1, 2007, Ms. Mujakic was injured in the course of the employment. A worker's compensation claim followed and Ms. Mujakic retained an attorney, Jay Roberts, to assist her with that matter. Ms. Mujakic was released to return to work without restrictions approximately one month before her employment ended. Ms. Mujakic returned to work and continued to perform her regular duties until June 21, 2009.

On June 11, 2009, Ms. Mujakic signed a "General Indemnifying Release, Separation Agreement and Confidentiality Agreement" to resolve the worker's compensation matter. Attorney Robert's secretary reviewed the settlement document with Ms. Mujakic without the assistance of an interpreter. The settlement document included a provision that Ms. Mujakic would resign her employment, would not seek future employment with the employer, and would waive any and all rights to be considered for future employment. Ms. Mujakic could not read the settlement agreement. At the time Ms. Mujakic signed the settlement document, she did not understand

that the proposed worker's compensation settlement would require her to leave her employment.

The employer's attorney forwarded the settlement document that Ms. Mujakic and her attorney had both signed to Bruce Smith, a corporate officer with the employer. Mr. Smith signed the document on June 17, 2009.

On June 21, 2009, Rick Wood, Human Resources Manager, directed a Bosnian-speaking shift superintendent to notify Ms. Mujakic at the start of her shift that she was separated from the employment pursuant to the terms of the worker's compensation agreement. When Ms. Mujakic arrived for work, the superintendent notified Ms. Mujakic that she was *fired* from the employment. Ms. Mujakic was unaware that she had consented in writing to separate from the employment and had not intended to separate from the employment. From the communication from the shift superintendent, Ms. Mujakic understood that she was discharged from the employment.

Ms. Mujakic attempted to contact her attorney to discuss the separation from the employment, but the attorney would not meet with Ms. Mujakic.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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.

There is no Iowa case law precedent concerning what constitutes a voluntary quit in the context of a worker's compensation settlement agreement that obligates an employee to separate from the employment.

The weight of the evidence in the record indicates that Ms. Mujakic never formed the intent to sever the employment relationship. Because of the language barrier, Ms. Mujakic did not understand that the worker's compensation settlement agreement obligated her to resign from the employment. Ms. Mujakic did not understand at the time she signed the settlement agreement and she did not understand at the time she was informed on June 21, 2009 that she had to leave the workplace. The administrative law judge concludes that Ms. Mujakic's separation from the employment was involuntary, and was a discharge.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

The employer has the burden of proof in this 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).

There is no evidence in the record to suggest that Ms. Mujakic engaged in any misconduct in connection with the employment. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Mujakic was discharged for no disqualifying reason. Accordingly, Ms. Mujakic is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Mujakic.

DECISION:

The Agency representative's August 14, 2009, reference 02, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs