IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

SHEILA M HULL Claimant **ABSTRACT & TITLE GUARANTY OF DES MOINES COUNTY INC** Employer	**APPEAL 17A-UI-02453-NM-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/22/16** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 28, 2017, (reference 03) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on March 28, 2017. The claimant participated and testified. The employer participated through Member Attorney Mitchell Taylor. Administrative Assistant Carol Marshall was also present on behalf of the employer but did not testify. Claimant's Exhibits A and B were received into evidence.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did 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: Claimant was employed full time as an abstractor from October 31, 2016, until this employment ended on February 6, 2017, when she was discharged.

On January 30, 2017, claimant left work due to illness. Claimant was out sick again the following day, and notified the employer of such. By Wednesday, February 1, claimant's three-year-old daughter had also gotten sick and was running a very high fever. Claimant's child continued to run a high fever the rest of the week and was unable to go to childcare. Claimant properly reported that she would not be in to work each day. Claimant is the child's sole caregiver. On Saturday, February 4, claimant's child was admitted to the hospital due to her illness. Claimant sent the employer an email on February 5 letting them know her child was in the hospital and she would not be in the next day.

The following day, February 6, claimant received an email from Taylor informing her that when she was ready to discuss her employment status she should call the office and set up a time to meet with him. The email also told claimant that if she wanted to come in to work that day and could confirm she was coming in, he would be willing to meet with her at 8:15 a.m. Claimant responded that her daughter's medical situation was life-threatening and she would not be able to meet with him that day, but would set up an appointment in the future. Claimant then inadvertently sent two blank emails to Taylor from her phone. Taylor responded to the two blank emails telling claimant to stop emailing the office and subsequently blocked her email address. Taylor testified he did this because he felt it was clear claimant was going to continue to email the office throughout the day and he had instructed her to call and set up a time to talk.

Claimant, unaware that her email address had been blocked, sent Taylor an email at 12:41 p.m. on February 6 asking if he could just email her what her employment status was. When claimant did not get a response from Taylor she sent him another email at 6:11 p.m. stating since she had not heard from him that she would assume her employment status was being terminated and would go forward under that assumption. Having again heard nothing in response to this email, claimant assumed she had been terminated and filed for unemployment insurance benefits. Prior to January 30, claimant had no issues with attendance and was never told that her job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code §96.5(1) provides:

> An individual shall be disqualified for benefits:
>
> 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 Code § 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.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> 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).

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); *see also* Iowa Admin. Code r. 871-24.25(35). A voluntary leaving of employment 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 a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Employer clearly initiated the communication with claimant regarding her employment status when it sent the email requesting a meeting on February 6, 2017. Because there was unclear communication between claimant and employer about the interpretation of both parties' statements about the status of the employment relationship; the issue must be resolved by an examination of witness credibility and burden of proof. Claimant initially agreed to set up a meeting, but then requested the employer inform her of her status via email. Since the employer had blocked claimant's email address, without her knowledge, it did not receive this request. When claimant heard nothing back she sent another email telling the employer she would assume, if she did not hear anything, that she had been terminated from employment. Claimant again heard nothing, as the employer had blocked her email without her knowledge. Since most members of management are considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee, it is reasonably implied that the ability to communicate clearly is extended to discussions about employment status. Claimant's interpretation of the conversation as a discharge was reasonable and the burden of proof falls to the employer.

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 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the

carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy. An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Here, claimant was off work for approximately one week due to her own illness and serious family needs. Before claimant had an opportunity to return to work, she was discharged by the employer.

Claimant had no prior issues with her attendance and was never warned her job was in jeopardy. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The February 28, 2017, (reference 03) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits withheld shall be paid to claimant.

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Nicole Merrill
Administrative Law Judge

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Decision Dated and Mailed

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