

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KATHERINE M O'BRIEN**

Claimant

**SOUTHEAST POLK COMMUNITY SCH DIST**

Employer

**APPEAL 21A-UI-19637-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/06/21**

**Claimant: Appellant (2)**

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

Iowa Code §96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Katherine M O'Brien, the claimant/appellant, filed an appeal from the August 23, 2021, (reference 01) unemployment insurance (UI) decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 27, 2021. Ms. O'Brien participated and testified. The employer did not register for the hearing and did not participate. Claimant's Exhibit A was admitted as evidence.

**ISSUE:**

Did Ms. O'Brien voluntarily quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. O'Brien began working for the employer in January 2019. She worked as a full-time teaching associate. Her employment ended on June 7, 2021.

Ms. O'Brien worked in a level three special education classroom. Part of her job duties was to give students prescription medications and document that she did so. Ms. O'Brien was working in a classroom with another teaching associate with whom she did not get along. The other teaching associate told the classroom teacher and the principal that Ms. O'Brien had put the other associates initials on documents indicating that the other associate had given a student medication. Ms. O'Brien did not recall doing such a thing. Ms. O'Brien testified that she understood completing the paperwork was an important part of her job, and also she, and other associates, would make mistakes sometimes. However, when she, or another associate, made a mistake, the person would correct the mistake and write their initials next to the correction.

On May 18, 2021, the employer put Ms. O'Brien on paid administrative leave pending the outcome of its investigation. On June 7, 2021, the employer told Ms. O'Brien that she could either quit or be fired because the employer no longer trusted her. Ms. O'Brien asked if she could work in any other position, or in any other school building to remain employed. The employer told her no. Ms. O'Brien resigned. Ms. O'Brien had no prior disciplinary record.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. O'Brien quit in lieu of discharge, and disqualifying, job-related misconduct has not been established.

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. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Admin. Code r. 871-24.26(21) 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:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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). 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). In this case, Ms. O'Brien did not have the option of remaining employed nor did she express an intent to terminate the employment relationship. 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).

In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits.

Iowa Administrative Code rule 871-24.32(1)a provides:

"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 Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The purpose of this rule is to assure that an employer does not save up acts of misconduct and spring them on an employee when an independent desire to terminate arises.

In an at-will employment environment, 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, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

In this case, Ms. O'Brien had no prior documented discipline and was unaware her job was in jeopardy prior to the May 18 suspension. Ms. O'Brien resigned because the employer told her that she would be fired if she did not resign. The employer did not participate in the hearing and provided no evidence of misconduct on the part of Ms. O'Brien. The evidence also does not establish misconduct. Since the employer has failed to meet its burden of proof in establishing a current act of disqualifying job-related misconduct, benefits are allowed.

**DECISION:**

The August 23, 2021, (reference 01) unemployment insurance decision is reversed. Ms. O'Brien was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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November 10, 2021  
Decision Dated and Mailed

dz/scn