IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SHERRY M KELLOGG
Claimant

SEARS ROEBUCK & CO
Employer

APPEAL NO. 11A-UI-03903-PT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/13/11
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 17, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 27, 2011. Claimant participated. Employer participated by Bridgett Clark, Human Resource Manager. Employer's Exhibit 1 was admitted into evidence.

ISSUES:

The issue in this matter is whether claimant was discharged for misconduct or quit.

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

The claimant was given the chance to resign or be discharged by the employer. A quit conferred a benefit on employer and the claimant. The claimant quit on February 16, 2011 rather than be discharged.

REASONING AND CONCLUSIONS OF LAW:

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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

This is not a disqualifiable event because claimant quit in lieu of discharge. The rules specifically state that benefits shall be allowed when a person quits in lieu of discharge. It is not a true voluntary quit nor is it a discharge. It is an involuntary quit, a different type of separation not disqualifying under Iowa Code section 96.5-1 as a voluntary quit or under 96.5-2-A as a discharge for misconduct.

While there is a difference in opinion on this issue within the department, the plain reading of the rule has but one logical conclusion. There is no language that shifts the burden of proof from a quit to a misconduct issue. Nor do the rules of statutory construction allow for a misconduct analysis under this rule. Tradition within the appeal section recently has been to shift this type of case to the issue of misconduct. This approach gives the employer a second bite of the apple so to speak. The undersigned has always disagreed with this erroneous interpretation.

The rule specifically states that quitting under such duress is a quit for good cause attributable to employer. We as administrative law judges are bound by the enabling statues and rules. Absent a specific rule that shifts this issue to misconduct, this is a quit for good cause as shown by the rule. Employers receive significant benefit where an employee chooses to quit rather than face discharge.

When first introduced the rule history was explained that qualification is automatic under this circumstance because of the benefit conferred on the employer by a voluntary resignation. That history has been ignored far too long. The department's fact finding AND decision which has remained static, still reflects the original intent of the rule and finds that a quit when faced with a quit or discharge scenario is a quit with good cause attributable to the employer.

871 IAC 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.

The administrative law judge holds that claimant was not discharged for an act of misconduct and was not a voluntary quit and, as such, is not disqualified for the receipt of unemployment insurance benefits. This is a quit for good cause attributable to employer based on the administrative rules.

DECISION:

The decision of the representative dated March 25, 2011, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Ron Pohlman
Administrative Law Judge

_____
Decision Dated and Mailed

rrp/css