

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLY V BRISSETTE**  
Claimant

**APPEAL NO: 10A-UI-10876-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OMEGA CABINETS LTD**  
Employer

**OC: 07/04/10**

**Claimant: Appellant (4)**

Section 96.5-1 – Voluntary Leaving  
Section 96.5-2-a – Discharge  
871 IAC 26.14(7) – Late Call

**STATEMENT OF THE CASE:**

Kelly V. Brissette (claimant) appealed a representative's July 28, 2010 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Omega Cabinets, Ltd., now known as Masterbrand Cabinets, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 21, 2010. This appeal was consolidated for hearing with on related appeal, 10A-UI-10875-DT, naming the employer as Masterbrand Cabinets, Inc. The claimant participated in the hearing. The employer received the hearing notice and responded by calling the Appeals Section on August 20, 2010. The employer indicated that Chase Thornburgh would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, Mr. Thornburgh was not available; therefore, the employer did not participate in the hearing. The record was closed at 10:11 a.m. At 10:12 a.m., the employer called the Appeals Section and requested that the record be reopened. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Should the hearing record be reopened? 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 employer received the hearing notice prior to the September 21, 2010 hearing. The instructions inform the parties that they are to be available at the specified time for the hearing, and that if they cannot be reached at the time of the hearing at the number they provided, the judge may decide the case on the basis of other available evidence. The reason the employer's

witness was not available at the scheduled time for the hearing was that he was in another meeting with other employees that ran longer than he had anticipated.

The claimant started working for the employer on November 14, 1994. She worked full time as a cost accountant. On June 22, 2010, she tendered her resignation. She indicated her last day would be July 23, 2010. The employer initially agreed that she could work through that date. She gave her notice because she had accepted another job offer, which employment was scheduled to begin on July 26. On July 1, 2010, the employer effectively discharged the claimant. No reason was given for the discharge or decision not to allow the claimant to work through July 23.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. After a hearing record has been closed the administrative law judge may not take evidence from a non-participating party but can only reopen the record and issue a new notice of hearing if the non-participating party has demonstrated good cause for the party's failure to participate. 871 IAC 26.14(7)b. The record shall not be reopened if the administrative law judge does not find good cause for the party's late contact. *Id.* Failing to read or follow the instructions on the notice of hearing are not good cause for reopening the record. 871 IAC 26.14(7)c.

The employer did not recall the Appeals Section for the September 21, 2010 hearing until after the hearing had been closed. Although the employer intended to participate in the hearing, the employer failed to follow the hearing notice instructions to be available at the scheduled time for the hearing. While the employer's witness may have had a good business reason for finishing his other meeting rather than ensuring he was available at the scheduled hearing time, this was a business decision for which the employer, not the claimant, must bear the consequences. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. The employer did not establish good cause to reopen the hearing. Therefore, the employer's request to reopen the hearing is denied.

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 a recognized good cause 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. The claimant did express her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. One reason a voluntary quit is non-disqualifying is if an

employee quits for the reason of accepting and entering into new employment. Iowa Code § 96.5-1-a. However, under this circumstance the employer's account is also not subject to charge. The claimant did voluntarily quit in order to accept a bona fide offer of other employment. The claimant is not disqualified from receiving benefits as a result of her quit from the employer in this case, but the employer's account will not be charged for benefits that might be paid for weeks after the effective date of the claimant's quit, July 23, 2010.

The next issue in this case is whether, for the time prior to the effective date of the claimant's quit, 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 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). The question is not whether the employer was right 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 matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 apparent sole reason the employer discharged the claimant on July 1 was her announced resignation effective July 23. While the employer may have had a good business reason for choosing to accelerate the claimant's last date of work given her announced resignation, this is not misconduct on the part of the claimant. The claimant is not disqualified from benefits for the period between the discharge and the date she was intending to quit, and the employer is not relieved of charge for benefits payable for that period.

**DECISION:**

The representative's July 28, 2010 decision (reference 02) is modified in favor of the claimant. The claimant voluntarily quit without good cause attributable to the employer effective July 23, 2010. The employer's discharge of the claimant prior to the effective date of the quit was not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits as of July 4, 2010 if she is otherwise eligible. The employer is chargeable for any benefits paid for the period of July 4 through the benefit week ending July 24, 2010. The employer is not chargeable for any benefits sought for weeks beginning on or after July 25, 2010.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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