

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LORENA ANDRADE
Claimant

IOWA PREMIUM LLC
Employer

APPEAL 17A-UI-03419-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/05/17
Claimant: Respondent (1-R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

Iowa Premium, LLC (employer) filed an appeal from the March 23, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination Lorena Andrade (claimant) did not engage in willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on April 21, 2017. The claimant participated personally. The claimant registered witnesses for the hearing, but did not arrange to have them available during the hearing. The witnesses were at work and were not contacted for the hearing. The employer participated through Human Resources Manager Jenny Mora. Christian (interpreter number 6708) and Louis (interpreter number 10342) from CTS Language Link provided Spanish interpretation for the hearing. No exhibits were offered or received into the record. Official notice was taken of the administrative record, specifically the fact-finding documents and the claimant's database readout (DBRO).

ISSUES:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits?

Can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a production worker on the Fabrication Floor beginning on September 29, 2016, and her last full day worked was March 3, 2017. The claimant was having an issue with a co-worker that day. The co-worker hit the claimant with her hook. The claimant reported the issue to General Foreman Arnulfo Garcia and requested a meeting. He denied the claimant's request and said he could not do anything as the co-worker was his friend. The

claimant left work that day. Garcia reported to Human Resources that the claimant had threatened her co-worker that day and she failed to report to a meeting he had requested between the employees.

On the morning of March 6, 2017, when the claimant arrived at work she was asked to report to the Human Resources Department. Human Resources Manager Jenny Mora told the claimant she was being suspended for 24 to 48 hours. She said she would contact the claimant about her future employment. Later that same day, the claimant's husband, who also works for the employer, was suspended. He told Mora that if he was suspended, then he and his wife would not be returning to work and would find other jobs.

On March 7, 2017, Mora attempted to contact the claimant to discuss her future employment based on her husband's statement the day before. The claimant did not answer the phone and her phone was not accepting voice messages. Mora determined the claimant had quit her employment when she did not answer her phone.

On March 8, 2017, the claimant contacted the employer to discuss her continued employment as she had not heard from Mora. She was transferred to the Human Resources Department, but no one answered and she was unable to leave a message. There were no further attempts at communication between the parties. The claimant believed she had been discharged when she did not hear from Mora.

The administrative record reflects that claimant has not received unemployment benefits because even though the unemployment insurance decision allowed benefits, her claim is still locked. The claimant has filed continued claims beginning the week of March 5, 2017 for the six weeks ending April 15, 2017. The administrative record also establishes that the employer did not participate in the fact-finding interview, make a first-hand witness available for rebuttal, or provide written documentation that, without rebuttal, would have resulted in disqualification. The employer provided a statement letter from Mora stating the claimant was considered to have abandoned her job after neglecting to stay after work for a meeting with Human Resources as instructed. It does not say on what date that occurred nor does it provide the policy the claimant's conduct violated.

REASONING AND CONCLUSIONS OF LAW:

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

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. The burden of proof rests with the employer to show that the claimant voluntarily left her employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). 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). It 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 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). Additionally, In

cases of suspension or disciplinary layoff, the claimant is considered to be discharged and the issues of misconduct must be resolved. Iowa Admin. Code r. 871-24.32(4).

Here, the claimant did not express an intent to quit nor did she engage in an overt act demonstrating she quit her employment. The only person who expressed an intent that the claimant would quit was her husband. The claimant herself never stated or expressed an intention to quit her employment. The employer has argued the claimant abandoned her job, or voluntarily quit her employment, by failing to remain at work for a meeting with Human Resources on March 3, 2017. However, that argument is not persuasive as the claimant returned to work on March 6 and made an attempt to return to work on March 8 by contacting the employer. The employer has not met the burden of proof to show the claimant voluntarily resigned her employment. Therefore, the case must be analyzed as a discharge.

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. Iowa regulations define misconduct, stating:

“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.

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

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 the 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.” Allegations of misconduct without additional evidence are not sufficient to result in disqualification. Iowa Admin. Code r. 871-24.32(4). Misconduct cannot be established when the employer is unwilling to furnish available evidence to corroborate its allegations. *Id.*

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

The decision in this case rests, at least in part, upon the credibility of the parties. The employer contends the claimant threatened another co-worker which was witnessed by Garcia. It also contends the claimant failed to stay after her normal shift for a meeting with Garcia and her co-worker. The claimant denies she made the threat or that she was told to stay for the meeting by Garcia. The employer did not have Garcia testify at the hearing as its normal business practice is to have only Human Resources participate in unemployment hearings. It also did not supply Garcia's statement for the hearing and did not have any explanation for its failure to submit the document as an exhibit. Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

The employer has not established that the claimant engaged in misconduct on March 5, 2017. It failed to establish that the claimant threatened a co-worker or refused to stay for a meeting after work. The employer has established the claimant was not available by phone when Mora called her the morning of March 7, 2017. However, as they had not prearranged a specific time for the phone call, this incident cannot be considered disqualifying misconduct. The claimant called the employer the following day. The employer has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. As no misconduct has been established, benefits are allowed.

As benefits are allowed, the issues of overpayment and repayment are moot and the charges to the employer's account cannot be waived.

DECISION:

The March 23, 2017, reference 01, unemployment insurance decision is affirmed. The claimant 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. The issues of overpayment and repayment are moot and the charges to the employer's account cannot be waived.

REMAND:

The case is remanded to the Benefits Bureau for further investigation to determine if the claimant's claim was mistakenly locked as benefits were allowed by the fact-finder in the unemployment insurance decision dated March 23, 2017, reference 01, which has been affirmed.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src