

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERICA C FERING
Claimant

APPEAL NO: 13A-UI-04501-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF IOWA CITY
Employer

OC: 03/24/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

City of Iowa City (employer) appealed a representative's April 8, 2013 decision (reference 01) that concluded Erica C. Fering (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 22, 2013. The claimant participated in the hearing. Karen Jennings appeared on the employer's behalf and presented testimony from one other witness, Mark Rummel. 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.

ISSUE:

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 claimant started working for the employer on October 16, 1998. Since November 3, 2003 she worked full time as a parking cashier on an evening shift from 4:15 p.m. until either 10:00 p.m. or 12:00 a.m., depending on the day. Her last day of work was March 19, 2013. The employer placed her on administrative leave on that date. On March 22 she was informed that she would be discharged, but when she requested to be allowed to resign in lieu of discharge, this was permitted.

The reason she was to be discharged was that on the evening of March 18 the claimant had taken a break at about 7:45 p.m. and had driven her car which had been parked in the parking ramp out of the ramp without stopping and paying the cashier who was covering for her while she was on break. The gate was up as it was malfunctioning. While the claimant would have expected a customer who was leaving the ramp to have still stopped and paid the cashier, as she left she did not think of stopping to pay, in part because she rarely went out of the ramp while on break, and in part because she knew if she had left her car in the ramp until the end of her shift and then left there would not have been a requirement to pay, as there would not have

been any cashier on duty and any member of the public parked in the ramp could leave without paying.

The employer viewed this as theft of city services in the amount of \$20.25; it was going to discharge the claimant under its policies providing for discharge for theft. There had not been any similar issues regarding the claimant in the past, and the most recent discipline of any kind was a verbal warning in August of 2009 for a verbal altercation with a customer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer 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. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993). The claimant did not have the intent to sever the employment relationship necessary to treat the separation as a "voluntary quit" for unemployment insurance purposes; she did not have the option to continue the employment; she could either quit or be discharged. 871 IAC 24.26(21). As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. *Peck v. Employment Appeal Board*, 492 N.W.2d 438 (Iowa App. 1992).

The next issue in this case is then whether 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 or even had any other choice but 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).

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 reason the employer effectively discharged the claimant was of her failure to stop and pay for her parking when she left on break on March 18. Misconduct connotes volition. *Huntoon*, supra. The evidence indicates that it was not the claimant's intent to steal. Under the circumstances of this case, the claimant's driving through without paying was the result of inefficiency, unsatisfactory conduct, inadvertence or ordinary negligence in an isolated instance. The claimant's actions that led to the loss of her job were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's April 8, 2013 decision (reference 01) is affirmed. The claimant did not voluntarily quit and the employer did effectively discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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