

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TABBY R DAVIS**

Claimant

**APPEAL 16A-UI-08656-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RABINER TREATMENT CENTER**

Employer

**OC: 07/17/16**

**Claimant: Appellant (5)**

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

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

Tabby R. Davis (claimant) filed an appeal from the August 5, 2016, (reference 01) unemployment insurance decision that denied benefits based upon the determination she voluntarily quit by refusing to continue working which is not a good cause reason attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on August 26, 2016. The claimant participated personally and was represented by Attorney Jason Burdick. The employer participated through Director of Human Resources Sara Hein. Employer's Exhibit 1 was received over the claimant's objection.

**ISSUE:**

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?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a facility that provides treatment services for substance dependent youth. The claimant was employed full-time as a Youth Care Worker beginning on September 13, 2015, and was separated from employment on July 13, 2016.

The employer has a Substance Abuse Policy and Procedure. (Employer's Exhibit 1.) It prohibits use, possession, or working under the influence of drugs or alcohol. The policy states if an employee is believed to be under the influence of drugs or alcohol, he or she will be sent for a drug test. The first violation of the policy results in the employee being placed in a rehabilitation program and continued strict compliance with the program after completion or it could lead to termination. As a practice, Director of Human Resources Sara Hein typically places the employees in treatment before termination. According to the policy, refusal to submit to testing "shall subject the employee to discipline up to and including discharge." (Employer's Exhibit 1, page 3.) The policy is maintained in the cottages where the employees work; however, the employees are not given a copy of the policy.

On July 12, 2016, two of the claimant's co-workers, who are also trained to provide treatment to substance dependent youth, reported to Director of Programming Justine that the claimant appeared to be at work under the influence. Justine notified Hein of the reports on July 13, 2016. Hein determined she had probable cause to send the claimant for a drug test.

When the claimant's supervisor found her, she informed the claimant that she was being sent for a drug test. She said the claimant would be escorted by her co-worker Lucas Handy. The claimant denied being under the influence and did not feel Handy was the appropriate one to escort her. Her supervisor told her that she either takes the test or her employment would be ended.

The claimant went to speak with Justine about the situation. The claimant asked for details about the accusations against her and to confront her accusers. Her requests were denied. The claimant reiterated she was not going with Handy for the drug test. Justine told her she had turned in her key then. The claimant removed the key from her key chain and left. The claimant did not speak to Hein that day about any of her options.

In the days that followed, the claimant contacted the employer to ask about the treatment option so she could remain employed. She was given no options to maintain her employment.

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

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit her employment but was discharged for disqualifying misconduct. Benefits are denied.

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. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 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). 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). 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 this case, the claimant did not intend to quit her employment; she merely disputed the employer's reasons for requiring her to take the drug test. She was told by multiple supervisors that if she failed to take the test then her employment was ended. The employer's policy states a refusal will result in a discharge from employment; it does not say the employee is considered to have voluntarily quit. The employer has not met the burden of proof to show the claimant voluntarily quit her employment. Therefore, the claimant's separation will be analyzed as a discharge.

The next issue is whether the claimant was discharged for disqualifying misconduct. Iowa regulations define misconduct:

“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 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). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Both parties agree the claimant was directed to take a drug test and she refused. The employer has a unique interest in maintaining a drug-free environment as it provides treatment to drug-dependent youth. The claimant acknowledged the employer had a right to send her for testing if it believed she was under the influence. Other employees who are trained to observe people under the influence reported to the employer that they believed the claimant was under the influence. The claimant's refusal to take a drug test was a deliberate disregard of the employer's interests and is disqualifying without prior warning. Accordingly, benefits are denied.

**DECISION:**

The August 5, 2016, (reference 01) decision is modified with no change in effect. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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