

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMY L JOHNSON
Claimant

ROC TAPROOM INC
Employer

APPEAL 19R-UI-03189-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/03/19
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 7, 2019, (reference 02) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on May 7, 2019. Claimant participated. Employer participated through vice president of operations Dave Brown.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did 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: Claimant began working for employer on June 28, 2017. Claimant last worked as a part-time server. Claimant was separated from employment on February 2, 2019, when employer closed its Merle Hay location.

Employer operates Old Chicago restaurants.

Claimant worked for employer at its Merle Hay location. Employer closed its Merle Hay location on February 2, 2019. Employer operates another location in Ankeny, Iowa. Employer informed all of its employees at the Merle Hay location that they could transfer to the Ankeny location. Employer instructed employees wishing to transfer to contact a manager named Amanda.

On February 7, 2019, claimant informed Amanda that she would like to transfer to employer's Ankeny location. Amanda put claimant's name down on a list of employees wishing to transfer.

An individual named Drake was a manager at the Merle Hay location. On February 9, 2019, claimant called the Ankeny location and asked to speak with the general manager. The person who answered the phone stated that the general manager was not in, but that claimant could

speak with Drake. Claimant asked Drake if she was on the schedule at the Ankeny location. Drake stated that the schedule was not posted, but that he would call claimant back to inform her of her assigned work hours. Drake never called claimant back and claimant was not assigned work hours at the Ankeny location.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether claimant resigned or was discharged by employer. The employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge. Iowa Code § 96.6(2). 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).

In this case, claimant did not have any intent to resign from employment. Claimant also did not take any action to resign. Claimant put her name on the transfer list, as instructed by employer. Claimant then exhibited her intent to work at the Ankeny location by seeking the schedule from Drake, a former manager at the Merle Hay location. Claimant was reasonable in relying on Drake's assurance that he would call her back with work hours, given that he was a manager at the Merle Hay location and was given the phone at the Ankeny location when she asked to speak with a manager. Drake did not call back with assigned work hours, as he represented he would. Employer did not establish it ever actually put claimant on the schedule to work.

Employer failed to establish claimant voluntarily quit her employment. Instead, employer ended the relationship when it closed the Merle Hay location and did not put claimant on the schedule to work at its Ankeny store.

Claimant could be disqualified from receiving benefits if employer ended the relationship because of misconduct.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.32(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.

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).

In this case, employer has not established claimant was discharged for misconduct. Employer did not assign claimant further work after it closed the Merle Hay location, so it cannot assert she was discharged for attendance reasons. Instead, employer closed a location and failed to assign claimant further work. Claimant was separated through no fault of her own.

DECISION:

The March 7, 2019, (reference 02) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/scn