

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CYNTHIA A BLISS EASTLAND
Claimant

APPEAL 17A-UI-11513-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILLIAMS NATIONAL SURETY CORP
Employer

**OC: 10/15/17
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 1, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit work by refusing to continue working. The parties were properly notified of the hearing. A telephone hearing was held on December 4, 2017. The claimant, Cynthia A. Bliss Eastland, participated. The employer, Williams National Surety Corporation, participated through Sandra Timmerman, Senior Vice President, General Counsel, and Secretary. Claimant's Exhibit A and Employer's Exhibit 1 was received and admitted into the record without objection.

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 was employed full time, most recently as an agent relations coordinator, from August 1996 until October 12, 2017, when she was discharged. Prior to the summer of 2017, claimant was supervised by Brad Williams. Under Brad Williams, claimant was permitted to use her personal and vacation time with autonomy. She would leave work when she needed to leave, and she would then update the leave calendar the following day. Claimant was not required to inform anyone that she was leaving. In mid-2017, Brad Williams died and Timmerman became claimant's acting supervisor.

On October 11, Timmerman sent claimant an email asking for all the Oklahoma agents' reports for the month. Claimant came to Timmerman and asked why she was taking away Oklahoma responsibilities. Timmerman denied that she was taking these responsibilities from claimant. Claimant pressed the issue, calling Timmerman several names. She then went back to her desk and decided to leave work. It is unclear whether claimant had any personal time remaining on October 11. After claimant left work, she contacted owner Gary Williams and

requested to meet with him the next time he was in town. Timmerman also called and spoke to Gary Williams after claimant left work that day. Claimant remained on-call that evening and the following morning. When claimant reported to work on October 12, Timmerman told her that she no longer had a job because when she left early the day before, the employer believed that she quit. Claimant had never been warned or disciplined for leaving work without permission or for leaving work when she did not have any leave time remaining.

REASONING AND CONCLUSIONS OF LAW:

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

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant provided credible testimony.

Iowa Code §96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). 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 a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Here, claimant's conduct demonstrates an intent to keep her employment. Claimant had previously been allowed to leave when she wanted or needed to leave and update the calendar the following day. Claimant remained on-call through the evening of October 11 and early hours of October 12. She did not tell anyone she was quitting or pack up her personal belongings prior to departing on October 11. The evidence shows that claimant did not quit her job.

Therefore, this case will be analyzed as a discharge from employment and the employer bears the burden of establishing disqualifying misconduct.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

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).

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). 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."

In this case, claimant called Timmerman several names. While these names were certainly not appropriate, they were not vulgar and nothing about her comments or conduct was threatening to Timmerman or the employer generally. Even if claimant did not have the leave time to cover her absence on the afternoon of October 11, she had never been warned for this issue in the

past. Claimant's conduct was at most an isolated incident of poor judgment. The employer has not established that claimant was discharged for disqualifying, job-related misconduct. Benefits are allowed, provided she is otherwise eligible.

DECISION:

The November 1, 2017 (reference 01) unemployment insurance decision is reversed. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn