

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERESA G BREWER**  
Claimant

**APPEAL NO: 13A-UI-11109-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ANNETT HOLDINGS INC**  
Employer

**OC: 08/25/13**

**Claimant: Appellant (5)**

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

**STATEMENT OF THE CASE:**

Teresa G. Brewer (claimant) appealed a representative's September 18, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Annett Holdings, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was convened on October 23, 2013 and reconvened and concluded on November 18, 2013. The claimant participated in the hearing. Jennifer Rice of Equifax/TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Michael Brockman. 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?

**OUTCOME:**

Affirmed as modified with no effect on the parties. Benefits denied.

**FINDINGS OF FACT:**

The claimant started working for the employer on October 10, 2011. She worked part time as a housekeeper at the employer's Des Moines, Iowa hotel. Her last day of work was August 25, 2013. The employer sent her home from work that day.

The claimant had reported for work that morning at about 7:30 a.m. Shortly after 8:00 a.m. the claimant got into an altercation with a coworker in the laundry room. The coworker pushed the claimant first, but the claimant then pushed the coworker back. After this altercation the assistant head housekeeper told the claimant to leave; she clocked out at about 8:40 a.m. However, after she clocked out but before leaving the premises she contacted Brockman, the

general manager, and informed him of the altercation; he advised her that he would come in and investigate.

The claimant made a complaint with the police. Later on August 25 a police officer informed her that both she and the coworker were being discharged. Believing that she had been discharged, the claimant did not check in with Brockman to learn what the outcome of his investigation was, but ceased reporting for work. The employer therefore asserted that the claimant had voluntarily quit. However, in fact had the claimant contacted the employer, she would have been informed that she was being discharged because of her involvement in the altercation; continued work with the employer was not available for the claimant.

#### **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.

Rule 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 and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that she voluntarily quit because she did not check back with the employer after being informed there would be an investigation. However, while the claimant may not have checked back to officially learn of the result directly from the employer, in fact the employer had determined that the claimant's job would no longer be available to her, so the information from the police officer upon which the claimant had reasonably relied was correct. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

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); Iowa Code § 96.5-2-a. 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).

Fighting at work can be misconduct. *Savage v. Employment Appeal Board*, 529 N.W.2d 640 (Iowa App. 1995). The exception would be if the claimant shows 1) failure from fault in bringing on the problem; 2) a necessity to fight back; and 3) an attempt to retreat if reasonable possible. *Savage*, supra. The claimant has not established that these elements apply to her pushing back the coworker on August 25. The claimant's fighting with the coworker shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's September 18, 2013 decision (reference 01) is modified with no effect on the parties. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 25, 2013. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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