

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL J THOMAS
Claimant

APPEAL NO: 14A-UI-05515-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EYM KING OF IOWA LLC
Employer

OC: 05/04/14
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

EYM King of Iowa, L.L.C. (employer) appealed a representative's May 23, 2014 decision (reference 02) that concluded Cheryl J. Thomas (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 18, 2014. The claimant participated in the hearing and presented testimony from one other witness, Jeree Thomas. La Sobiesvkoda appeared on the employer's behalf and presented testimony from one other witness, Kevin Clark. 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. Benefits allowed.

FINDINGS OF FACT:

After a prior period of employment with the employer's predecessor owner, the claimant started working for the employer when the employer took over ownership on June 1, 2013. She worked full time as assistant manager of one of the employer's Des Moines, Iowa restaurants. Her last day of work was April 24, 2014.

The claimant was scheduled to work a 4:00 p.m. to close shift on April 24. At about 4:30 p.m. the district manager, Clark, came in to discuss a discrepancy on the labor records for the shift the prior night. She was starting to explain that she had closed the restaurant a little bit early as she had started to suffer a seizure. Clark indicated this was a problem. He then saw the claimant's daughter, Jeree Thomas, at a nearby counter talking on a cell phone. He told her to

put the cell phone away and asked her if she was working there. When she responded yes, he indicated that this was also a problem because family members were not supposed to work together. The claimant started to dispute this, and Clark told both the claimant and Jeree Thomas to leave. They did so, leaving at about 4:45 p.m. with the claimant understanding that she had been discharged.

The claimant then called the marketing manager, Sobiesvkoda, shortly after 5:00 p.m. wishing to dispute the discharge. However, Clark had already called Sobiesvkoda and told her that the claimant had gotten upset during the warning discussion and had gotten up, quit, and left the restaurant. Sobiesvkoda agreed to meet with the claimant on April 25, but in that meeting was still accepting as true the report by Clark that the claimant had quit when she left the restaurant on April 24.

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 on April 24, 2014. While there is disputed testimony as to what happened when the claimant left the restaurant, it is undisputed that the claimant called Sobiesvkoda within about a half-hour after leaving the restaurant to discuss her continued employment, an action which would be wholly inconsistent with an intention to quit. 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. Rule 871 IAC 24.26(21).

The issue in this case is then whether the employer 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. Rule 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. Rule 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. Rule 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 the issues with the labor costs and closing the restaurant early on April 23, 2014 and having her daughter work at the same restaurant. These would be at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's May 23, 2014 decision (reference 02) is affirmed. The claimant did not voluntarily quit and the employer did 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

ld/pjs