IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LISA K SMITH
Claimant

SPARBOE FOODS LLC
Employer

APPEAL NO. 16A-UI-08668-TN

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/03/16
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.28(21) – Compelled Resignation/Choice of Resigning or Being Discharged

STATEMENT OF THE CASE:

Lisa K. Smith filed a timely appeal from a representative's decision dated August 3, 2016, reference 01, which denied unemployment insurance benefits finding the claimant voluntarily quit work on June 7, 2016 finding the claimant's resignation was not caused by the employer. After due notice was provided, an in-person hearing was held in Waterloo, Iowa on Wednesday, September 14, 2016. Claimant participated. The employer participated by Ms. Amanda Steffin, Human Resource Generalist, Ms. Alexis Jauss, Human Resource Generalist II, and Ms. Carrie Dennler, Human Resource Administrator. Claimant's Exhibits 1 through 31 were admitted into evidence for the general probative value. Employer's Exhibits A through D were admitted into the record for their probative value.

ISSUE:

At issue is whether the claimant was given the choice of resigning or being discharged and if so, whether claimant's discharge took place for misconduct in connection with her work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Lisa Smith began employment with Sparboe Foods LLC on March 1, 2016. Ms. Smith was hired to work as the company's full-time Human Resource Manager at its New Hampton, Iowa facility and was paid by salary. Her immediate supervisor was Mr. Troy Hutchinson, Vice President and General Counsel. Although Ms. Smith had applied for a Human Resource Generalist position, she was hired to be the Human Resource Manager. The claimant was informed that she would be given some time to familiarize herself with company policies and procedures and protocol, but the employer expected Ms. Smith to perform Human Resource duties and recruitment as she learned. The claimant was given some initial training days and Ms. Steffin an information binder to assist the claimant in performing her duties. Although Ms. Smith was expected to perform ministerial Human Resource duties using her own training and experience, her supervisor, Mr. Hutchinson, took an active role in monitoring Ms. Smith's work activities and often corresponded with the claimant via e:mail. The claimant was given a job description and from

time to time, Mr. Hutchinson questioned the claimant about specific issues, gave directives to the claimant and questioned Ms. Smith about issues as they unfolded. Mr. Hutchinson's e:mails in general appeared to be cordial and designed to assist rather than to chastise the claimant initially.

During March and April 2016, Ms. Smith was working at the company's New Hampton, Iowa facility and a number of issues with employee disciplines, terminations, and attendance problems had come to the attention of Mr. Hutchinson and he communicated with Ms. Smith about a number of these issues asking Ms. Smith to provide him specific information on a number of personnel issues. Because Mr. Hutchinson was concerned about the focus of Ms. Smith's work activities, he instructed her to go to him first about issues so that he could assist her. Mr. Hutchinson also questioned Ms. Smith about the progress on some discharge and hiring matters and about her failure to meet with him as agreed. Because Mr. Hutchinson had asked the claimant for specifics on personnel matters and had repeated his request if the claimant did not comply, the claimant sent her supervisor an e:mail on April 22, 2016 instead of calling Mr. Hutchinson directly as he had requested.

The claimant's e:mail to her supervisor was 3 ½ pages in length and accused Mr. Hutchinson of sending her extremely harsh, demanding and hostile and condescending e:mails and stated that she had not called Mr. Hutchinson back by telephone as requested that day because she believed a discussion would have proven "illogical" and that the conversation may not have remained civil. Ms. Smith then detailed six incidents regarding personnel matters alleging that Mr. Hutchinson had "placed her head on the chopping block" and criticized Mr. Hutchinson for not suggesting tactics to take with employees as well as criticizing his decision to not use progressive discipline. Claimant also criticized Mr. Hutchinson for "challenging" her decisions, criticized her supervisor for failing to provide an intern for her and alleged that the company had fostered an attitude of throwing other employees "under the bus." Ms. Smith also sent a copy of the e:mail that she had sent to Mr. Hutchinson to the company owner, the plant manager and the company's vice president of operations. Mr. Hutchinson considered the claimant's e:mail to be insubordinate and questioned the claimant's motive for copying other individuals in the company.

On April 25, 2016, the claimant's supervisor sent her an e:mail requesting a meeting in Wayzata, Iowa, the following day. Claimant responded she had other things scheduled and that it was a conflict with her college examination schedule. Her supervisor responded that the claimant was to meet with him as instructed.

During the April 27, 2016, meeting with Mr. Hutchinson and Alexis Jauss, the claimant was instructed not to go around to other management as she had done in her recent e:mail, was requested to go through the e:mails that Mr. Hutchinson had previously sent her to identify for him the negative, condescending, harassing portions that she had alleged. Because the claimant could not respond, she was given until May 20 to do so and requested to highlight the areas of the e:mails that she considered offensive and the claimant was also instructed if her purported e:mails did not contain the things that she had alleged, that she should provide an apology to Mr. Hutchinson. The claimant was provided her 60-day evaluation which indicated that she needed to improve a number of aspects of her employment. Ms. Smith e:mailed an apology to her supervisor on May 14, 2016.

The working relationship between the parties seemed to improve for a period of time during career and hiring fairs that were held at the New Hampton site in mid May 2016. While meeting with the claimant and Carrie Dennler during this time, Mr. Hutchinson stated his wish that the

claimant devote approximately 80% of her time to recruiting and that Ms. Dennler's position should be approximately 80% human resource activities and 20% recruiting.

On May 20, 2016, Mr. Hutchinson provided some suggestions for future recruiting efforts and suggested that human resource representatives be more friendly and smiling.

In late May 2016 a request was made for the claimant and Ms. Dennler to provide time and work lists of tasks that they were performing. Ms. Smith indicated that she would provide that at another time as she was focusing on a new job fair. Approximately two days later on May 27, 2016, Ms. Steffin again requested the claimant complete a task list for herself and Ms. Dennler and that time reporting had not taken place by June 1, 2016. Mr. Hutchinson himself requested that the claimant begin providing time reporting as other employees were currently providing. Mr. Hutchinson also requested some other specific information from the claimant on personnel matters.

Ms. Smith left work at approximately noon on Thursday, June 2, because her child was ill at daycare. When Mr. Hutchinson attempted to contact her the following day, Friday, June 3, 2016, he was unable to reach the claimant at work and sent an e:mail inquiring where she was. Ms. Smith responded that she was home with a sick child and that she had informed the employer the previous day of the reason that she was leaving and her reason remained the same. The claimant was then instructed by Mr. Hutchinson to begin tracking her work hours and reporting her time daily and questioned Ms. Smith about why a candidate for employment had not been hired.

During a call initiated by Mr. Hutchinson on June 3, 2016, Mr. Hutchinson contacted the claimant by telephone stating, "I want to talk to you about the role you have in New Hampton. I really think that you need to give serious thought to resigning from the position, or we'll have to look at terminating you." When Ms. Smith asked why she deserved to be terminated, Mr. Hutchinson responded in a generalized way, "You know this is not working out." The claimant then responded that she had received conflicting information. The claimant continued to explain that she was unsure how to proceed although she had been told to work with the entire Human Resource team about questions, that when she does so she gets questioned by Mr. Hutchinson and that other times when she attempts to include Mr. Hutchinson on issues, Mr. Hutchinson complains that he cannot be called down to the lowest level of the company with every employee issue. Ms. Smith then went on to explain that she received countermanding information as to whether she should focus on recruiting or Human Resource duties. The claimant then questioned whether Mr. Hutchinson wanted a Human Resource manager or recruiter to be allowed autonomy because failure to include Mr. Hutchinson in decisions appeared to be bothersome to Mr. Hutchinson. Mr. Hutchinson responded that the claimant was making decisions on her own without his involvement and stated, "You either resign from your position when you return to work on Monday, or I will be coming to New Hampton to terminate you." The claimant confirmed that she was given the choice of only to resign or be terminated and Mr. Hutchinson confirmed that as being correct.

Ms. Smith submitted her resignation on June 6, 2016 to be effective July 8, 2016. The claimant stated her intention during the notice period to obtain full staffing at the New Hampton site and to support the site's Human Resource administrator.

Mr. Hutchinson received the claimant's e:mail resignation and confirmed that the claimant's decision was the best for Sparboe and New Hampton and further stated, "I'm fine with you sticking around until July 8, but from my perspective, it is unnecessary so if you want to leave earlier, I'm certainly fine with that as well." The following day, June 7, 2016, Mr. Hutchinson

said in a telephone conversation with the claimant "I really think that it is in the best interest of the company that you make today your last day, so if you want to leave you can and we can change your resignation date." When the claimant stated that she had set July 8 as her last day but would leave sooner if told to do so, the conversation then went to Mr. Hutchinson's expectations directing the claimant to report how she was spending her time to him and again instructing the claimant to supply discipline write-ups for two employees who had been separated from employment. The claimant attempted to explain the write-ups had not been completed beyond draft form and had not been given to the employees because they had not returned to work and had abandoned their jobs. The claimant's supervisor then again urged the claimant to change her resignation date to that day whereupon Mr. Hutchinson responded claimant would be under some new and specific conditions and stipulations if she were to stay. The conversation ended with the claimant again asking if Mr. Hutchinson wanted June 7, 2016 to be her last day of employment to which Mr. Hutchinson responded, "Yes. I have to go now. I'll follow up with you later."

Ms. Smith was under the belief that she had been discharged effective that date and sent e:mails to other individuals in the company informing them of her discharge. The claimant also requested the payroll department supply check stubs and pay through the July 8, 2016 date that she had set as the effective date of her forced resignation. A short time later Mr. Hutchinson again responded that he was not setting that day as the claimant's final day of employment. Ms. Smith considered herself discharged by the employer and did not respond nor report back to work after that date.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes that the claimant chose to voluntarily quit her employment with Sparboe Foods or whether the claimant was discharged by the employer. Having considered the matter at length, the administrative law judge concludes that Ms. Smith tendered her resignation only because she had been given the choice of resigning or being discharged by the employer.

Iowa Admin. Code r. 871-24.26(21) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

Under administrative rule an individual who is compelled to resign in lieu of being discharged is not considered to have voluntarily quit employment but has been discharged by the employer.

In discharge cases the employer has the burden of proof to establish disqualifying misconduct on the part of the claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). Where it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Although hearsay is admissible in administrative proceedings, it is not accorded the same weight as firsthand, sworn testimony providing that the firsthand sworn testimony is credible and not inherently improbable.

In the case at hand, the evidence establishes that the claimant was told that she must resign or she would be terminated by her employer. Because her resignation under those circumstances is considered to be a discharge, the employer has the burden of proof to establish disqualifying misconduct. The evidence on behalf of the employer was generally limited to the testimony of its three witnesses who were not directly involved with the events between Ms. Smith and Mr. Hutchinson that led to the decision to give the claimant the option of resigning in lieu of being discharged. The majority of the evidence in the record in this matter was supplied by Ms. Smith in the form of e:mails between the claimant and her supervisor that were neither correctly pre-identified or correlated.

Based upon the administrative law judge's conclusions of the information contained in the claimant's e:mail exhibits, the administrative law judge concludes the claimant was attempting to perform her duties to the best of her ability as a newly hired Human Resource Manager and that the claimant's understanding of the employer's expectations were made more difficult by directives from her supervisor that were often countermanding and difficult to comply with due to the requirement that she engage in recruiting as well as Human Resource work with little training as to Sparboe Foods procedures and protocols.

The evidence also establishes, however, that at times Ms. Smith lacked prudence in the manner that she had responded to her supervisor's inquiries. In these responses, however, the claimant was attempting to explain reasons for her conduct when responding to Mr. Hutchinson's inquiries.

The evidence establishes also that although the claimant's conduct and level of competence resulted in the employer's request that the claimant resign or be discharged, the employer was willing to allow the claimant to work through the 30-day notice period that she had provided after she had been told to resign or be discharged.

Because the claimant had been in effect discharged by the employer, the employer was free to set the claimant's last working day. The employer agreed to set the claimant's last working day as June 7, 2016 when the claimant asked if that day was to be her last day.

The propriety of the decision to discharge an employee is not an issue in an unemployment appeal. The issue is whether the evidence in the record establishes intentional disqualifying misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. The administrative law judge concludes based upon the evidence in the record that the employer instructed Ms. Smith to resign or be terminated because she did not have the ability to meet the employer's expectations regarding the level of competence needed by the company to fill the position of Human Resource Manager at its New Hampton facility.

The claimant had applied for the position of Human Resource Generalist but had been hired as the Human Resource Manager. The claimant was separated from her employment when she was unable to demonstrate the level of competency that the employer expected.

For unemployment insurance purposes, misconduct amounts to a deliberate and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standards of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or capacity, inadvertence or ordinary negligence in isolated incidents or good faith errors in judgment or discretion are not deemed to constitute work connected misconduct. 871 IAC 24.32(1)(a).

In this case the employer may have had justifiable business reasons for discharging the claimant. Based upon evidence presented during the hearing, the administrative law judge concludes that the claimant's unsatisfactory performance was due to inability and lack of sufficient time to learn the employer's processes and protocol. While the employer may have had further information, that information was not presented to the Appeals section. While the employer may have had justifiable business reasons for discharging the claimant, the evidence does not establish that the claimant committed a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits.

DECISION:

The representative's decision dated August 3, 2016, reference 01, is reversed. Claimant resigned from employment in lieu of being discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

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