

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOREEN L GINGRAS
Claimant

APPEAL NO. 15A-UI-04459-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC
Employer

OC: 03/15/15
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) - Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 7, 2015, reference 01, decision that allowed benefits to the claimant provided the claimant was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on February 3, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on May 11, 2015. Claimant Doreen Gingras participated and presented additional testimony through Norman Gingras. Patti Christensen represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Norman Gingras and Doreen Gingras, husband and wife, were employed by Barr-Nunn Transportation as a full-time over-the-road commercial truck driving team from April 15, 2014 until February 3, 2015, when the employer notified Mrs. Gingras and her husband, Norman Gingras, that they were discharged from the employment. The safety representative told Mr. and Mrs. Gingras, "We have to part ways." The message was conveyed after the couple complied with the employer's directive that they deliver the employer's truck to the employer's terminal in Manchester, Pennsylvania. At the time of the utterance, Mr. and Mrs. Gingras were participating by speaker phone. The safety representative did not specify that only one of them was discharged. The discharge was based on two incidents involving Mr. Gingras' operation of the truck. One of the incidents involved damage to a wheel rim. The other concerned another

motorist's assertion that the employer's truck had clipped the motorist's side mirror. After being told they were discharged from the employment, the couple removed their personal belongings from the employer's truck, rented a car and drove home to Florida. When they were hours away and hundreds of miles away from the Manchester terminal enroute home, their supervisor, Team Leader Jason Burdine, telephoned Mrs. Gingras and left a message indicating that she was welcome to continue in her employment. Mrs. Gingras was driving at the time and did not take the call. Ms. Gingras returned the call and spoke to Mr. Burdine. Mr. Burdine reiterated that Mrs. Gingras was welcome to continue her employment. Mrs. Gingras agreed to get back to Mr. Burdine, but then did not do so. Mrs. Gingras had been driving as a team with her husband since 1997 and had no interest in driving solo. The employer had not mentioned pairing Mrs. Gingras with another driver partner.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The weight of the evidence establishes that Mrs. Gingras reasonably concluded that she too was discharged from the employment when the safety representative told the pair that the company needed to part ways. After Ms. Gingras reasonably concluded that she had been discharged from the employment, she would not be obligated to return to the employer.

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 evidence establishes no misconduct on the part of Mrs. Gingras. Thus, a discharge from the employment would not disqualify Mrs. Gingras for benefits or relieve the employer of liability for benefits. Mrs. Gingras is eligible for benefits provided she is otherwise eligible. The employer's account may be charged.

This case can be analyzed in the alternative as a voluntary quit, with the same outcome.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Admin. Code r. 871-24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The evidence in the record indicates that the employer substantially changed the conditions of Mrs. Gingras' employment when the employer discharged Ms. Gingras' husband and driving partner from the employment. The husband and wife driving team arrangement was different from the run-of-the-mill driving partnership. The employer's proposal that Ms. Gingras continue in the employment would mean that Ms. Gingras would suddenly be separated from her spouse for extended periods, would mean that Ms. Gingras would be traveling great distance without the company, assistance and protection of her spouse, and that she would suddenly be singly responsible for the employer's truck. Ms. Gingras' decision not to continue in the employment under changed conditions would amount to a quit for good cause attributable to the employer. Mrs. Gingras would be eligible for benefits, provided she is otherwise eligible. The employer's account would be liable for benefits paid to Mrs. Gingras.

DECISION:

The April 7, 2015, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. In the alternative, the claimant quit for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs