

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDACE NEHRING

Claimant

APPEAL NO. 15A-UI-10894-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JET COMPANY INC

Employer

OC: 09/06/15

Claimant: Respondent (1)

Section 96.5-1 - Voluntary Quit

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jet Company (employer) appealed a representative's September 24, 2015, decision (reference 01) that concluded Candace Nehring (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 13, 2015. The claimant participated personally. The employer participated by Sandy Loney, Director of Human Resources and Safety; Kevin Heider, Engineer; and Jason Paterson, Trailer Sales Person. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 18, 2009, as a part-time advertising and marketing assistant. The claimant signed for receipt of the employer's handbook on February 17, 2009. Later the claimant became a full-time marketing assistant. On February 28, 2015, the employer issued the claimant a verbal warning for leaving early and taking frequent bathroom breaks. There was confusion about the policy and the employer was in the process of updating the handbook. The employer told the claimant she should get a medical note to take bathroom breaks. This would provide the employer with documentation. The claimant did not sign for receipt of any warning.

On May 28, 2015, a candidate for a job came into the lobby and was greeted by the claimant. The candidate was made to wait for 15 or 20 minutes between two interviews with the company. The candidate told the claimant she had heard in the community it was not a good place to work but she noticed the claimant had been there a long time. The candidate had decided not take the job at the company but the claimant encouraged her. The claimant admitted she was looking for another job.

On September 8, 2015, the employer told the claimant she could either quit or be terminated because the employer felt the claimant was unhappy working for the employer. The employer terminated the claimant because she was looking for another job and told the candidate.

The claimant filed for unemployment insurance benefits with an effective date of September 6, 2015. The employer participated personally at the fact-finding interview on September 23, 2015, by Sandy Loney.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did not.

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.

If an employee is given the choice between resigning or being discharged, the separation is not voluntary. The claimant had to choose between resigning or being fired. The claimant's separation was involuntary and must be analyzed as a termination.

The issue becomes whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was not.

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 Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's September 24, 2015, decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs