

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**EVA A ROSAS**

Claimant

**GOOD SAMARITAN SOCIETY INC**

Employer

**APPEAL 19A-UI-07035-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/04/19**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant/appellant filed an appeal from the August 23, 2019 (reference 01) unemployment insurance decision that denied benefits. A telephone hearing was originally scheduled for September 27, 2019 at 11:00 a.m. but was continued at claimant's request. A telephone hearing was held on October 10, 2019, at 8:00 a.m. The parties were properly notified of the hearing. Claimant participated with her attorney Richard Schmidt. Employer did not participate. No exhibits were admitted.

**ISSUE:**

Whether claimant's separation was a discharge for disqualifying job-related misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a cook from June 4, 2019 until her employment with Good Samaritan Society, Inc. ended on July 31, 2019. When claimant reported to work on July 31, 2019, employer told claimant that she had been taken off the schedule, that she no longer worked there and that she must surrender her badge. When claimant asked employer why she was being discharged, employer replied that claimant resigned. Claimant did not resign. Claimant had no intention of quitting her job. No other reason was provided to claimant for her discharge. Claimant had no prior disciplinary action.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant did not voluntarily quit her employment; claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code §§ 96.5(1). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608,

612 (Iowa 1980). Where there is no expressed intention or act to sever the employment relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). In this case, claimant had no intention of terminating her employment relationship with Good Samaritan Society, Inc. Because claimant did not voluntarily quit her job, claimant's separation from employment must be analyzed as a discharge.

Iowa Code section 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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

There is no evidence of misconduct by claimant. Employer has not met its burden of proving disqualifying job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The August 23, 2019 (reference 01) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Decision Dated and Mailed

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