

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RHONDA E EDGINGTON
Claimant

VAN BUREN COMMUNITY SCHOOL DIST
Employer

APPEAL 18A-UI-06704-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/20/18
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the June 14, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 6, 2018. Claimant participated and testified. Employer participated through Superintendent Dr. Pam Ewell and Human Resource Manager Mindy Smith.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on February 7, 2018. Claimant last worked as a full-time paraprofessional. Claimant was separated from employment on April 25, 2018, when she was discharged.

Claimant, as part of her regular job duties, was responsible for transporting a 12-year-old student from one location to another each afternoon. The student had several behavioral issues. Claimant spent mornings doing classroom work with another student. When claimant first began transporting the student he had been assigned an aid through his individualized

education program (IEP). The aid and claimant were both present during the transport and there were relatively little issues. The student was doing well enough his IEP team determined he no longer needed an aid. At this point in time the student began exhibiting concerning, and sometimes dangerous, behavior. Claimant testified the student would threaten to cause her to wreck the car, would unbuckle himself and move around to the point it would rock the vehicle, and would try to roll things on the floor that would wedge under the foot pedals controlling the gas and break. Claimant reported these behaviors to the employer and requested another person be present for the transport to assist with the student. The employer responded by explaining that was not possible, because it was no longer a part of the student's IEP. At the hearing Ewell acknowledged she was aware the student was engaging in these behaviors, but testified the appropriate thing for claimant to do would be to pull over and ignore the student until the behavior stopped. Smith testified she had not heard of any other paraprofessionals having these issues with the student, nor had she experienced these issues when transporting the student.

The final incident occurred on or around April 18, 2018. Claimant was transporting the student when he got out of his seat, began yelling and banging around, and told claimant he would wreck the vehicle. Claimant pulled the vehicle over and called the local sheriff for assistance. Following that incident claimant informed the employer she would not continue to transport the student unless someone else was present, as she did not feel it was a safe situation. On April 19, 2018 Ewell sent claimant an email instructing her that she would be required to perform all of her duties as assigned, including transport, or she would be considered to be resigning. Claimant responded that she was not resigning, but would not continue to do the transport alone because she did not believe it was safe. Claimant continued to report to work and perform her other job duties. On April 24, 2018, Ewell again sent claimant an email instructing her that she could either return to her transport duties or collect her belongings the following day. Claimant came in to work on April 25, 2018, collected her belongings, turned in her key card, and left.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 20, 2018. The claimant filed for and received a total of \$1,266.00 in unemployment insurance benefits for the weeks between May 20 and June 30, 2018. Both the employer and the claimant participated in a fact finding interview regarding the separation on June 13, 2018. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

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.

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).

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). 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 a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Here, the claimant clearly told the employer she was not resigning, but would not continue to perform her transport duties unless someone else was assigned to assist her. Claimant

continued to report to work and perform her other job duties during this time, showing it was not her intent to resign. Claimant stopped reporting to work on April 25, 2018, following an email sent by Ewell telling her she could either continue her transport duties or collect her belongings and leave. Claimant's interpretation of this directive as a discharge was reasonable and the burden of proof falls to the employer.

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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy. An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.

Here, the employer discharged claimant after she refused to continue on with her transport duties. While employees are expected to follow reasonable directives given by the employer, the directive in this case was not reasonable. Insubordination does not equal misconduct if it is reasonable under the circumstances. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa App. 1985). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. (Refusal to pick up mail at a place where racial harassment occurred.) *Woods v. Iowa Dep't of Job Serv.*, 327 N.W.2d 768, 771 (Iowa 1982). The Iowa Court of Appeals has previously found an employee's refusal to push a cart he, in good faith, believed was too heavy, just days after suffering a back injury at work, was found not to have engaged in misconduct. *Woodbury Cnty. v. Emp't Appeal Bd.*, No. 03-1198 (Iowa Ct. App. filed April 14, 2004).

Claimant expressed concern with her safety, and that of the student, if someone was not assigned to assist in the transport. Claimant's concerns were not unreasonable, given that the student was moving about the vehicle, unrestrained, while it was in motion and engaging in behavior that would distract any driver. The employer's solution to pull over and ignore the student until the behavior stopped was not reasonable given the threats being made to the claimant. Inasmuch the employer has not met the burden of proof to establish that claimant engaged in misconduct. Benefits are allowed, provided claimant is otherwise eligible. As benefits are allowed, the issues of overpayment and participation are moot.

In the alternative, even if claimant were to have voluntarily resigned, she has shown good cause reason for doing so.

Iowa Admin. Code r. 871-24.26 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:

(2) The claimant left due to unsafe working conditions.

...

(4) The claimant left due to intolerable or detrimental working conditions.

The transport conditions described by the claimant were not safe for either her or the student involved. Claimant's request for assistance while transporting the student was not unreasonable given the severity of his behavior and possibility for an accident while she was driving. These conditions created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment.

DECISION:

The June 14, 2018, (reference 01) decision is affirmed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits withheld shall be paid to claimant. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs