

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE K GUST
Claimant

CITY OF PULASKI
Employer

APPEAL 19A-UI-09010-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 10/20/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the November 6, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 10, 2019, at 1:00 p.m. Claimant participated. Employer participated through City Council Member Rosa Archer and was presented by Attorney Ashley Walkup. Claimant's Exhibits A – C were admitted. Employer's Exhibits 1 – 15 were admitted.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time city clerk from November 20, 2018 until her employment with the City of Pulaski ended on October 17, 2019. (Archer Testimony) As a city clerk, claimant served the city council members, prepared financial reports for the council and had access to city funds. (Archer Testimony)

In March 2019, claimant was charged with credit card fraud, a class D felony. (Claimant Testimony) Claimant did not notify employer of the pending criminal charges. (Claimant Testimony) Employer did not have a policy requiring disclosure. (Archer Testimony) On October 3, 2019, Rosa Archer, a city council member, asked claimant about the pending charges. (Archer Testimony) Claimant replied that it was not her (Claimant Testimony) and that the police kept getting her mixed up with someone else (Archer Testimony). On October 6, 2019, claimant told Archer that the charges were cleared up. (Archer Testimony) Claimant also told Jeremy Breeding, a city council member, that it was not her who was charged with the crimes. (Claimant Testimony)

On October 17, 2019, the city council, mayor and city attorney met with claimant to discuss the criminal charges. (Archer Testimony) Claimant again said that she was not the person charged with the crimes (i.e. that she was a victim of mistaken identity). (Archer Testimony) When confronted with information that she was the correct person charged with the crimes, claimant admitted she had pending criminal charges and stated that they were going to be dismissed. (Archer Testimony) When confronted with her prior lies to city council members, claimant

apologized and stated she did not disclose the charges to the council because she was embarrassed. (Archer Testimony) The council expressed its inability to trust claimant in the performance of her job duties. (Archer Testimony) Claimant was given the opportunity to resign in lieu of being terminated. (Claimant Testimony) Notwithstanding her resignation, claimant had no intention of quitting her job. (Claimant Testimony) At the time of claimant's separation, the criminal charges were still pending. (Archer Testimony)

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 disqualifying job-related misconduct. Benefits are denied.

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).

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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

As a preliminary matter, the criminal charges were pending at the time of separation so the charges do not constitute misconduct. Furthermore, I find claimant did not have a duty to report the criminal charges to employer as there is no policy or procedure requiring disclosure. However, claimant did have a duty of honesty to her employer. An employer can reasonably expect honesty from its employees without a formal policy or prior warning. When employer confronted claimant about the theft charge, claimant was intentionally dishonest with employer. As a city clerk, claimant handled tax payer's funds. Common sense dictates a person working in claimant's position needs to be trustworthy in order to maintain employment. Claimant's honesty has a direct connection to her ability to perform her employment duties. Employer discharged claimant because it lost confidence in her trustworthiness. Claimant's dishonesty was misconduct. Employer discharged claimant for disqualifying job-related misconduct. Benefits are denied.

DECISION:

The November 6, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/scn