

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KERRI D JONES
Claimant

FAIRFIELD BUSINESS CENTER INC
Employer

APPEAL 21A-UI-10264-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/29/19
Claimant: Appellant (2R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On April 12, 2021, Kerri D. Jones (claimant) filed an appeal from the April 12, 2021, reference 04, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with Fairfield Business Center, Inc. (employer) and failed to provide evidence that she left with good cause attributable to the employer. The parties were properly notified about the hearing held by telephone on June 28, 2021, and consolidated with the hearings for appeals 21A-UI-10257-SC-T, 21A-UI-10258-SC-T, and 21A-UI-10261-SC-T. The claimant participated personally. The employer participated through Marjorie Wood, Manager/Owner. No exhibits were offered into the record.

ISSUE:

Did the claimant voluntarily quit employment with good cause attributable to the employer or did the employer discharge the claimant for job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Receptionist/Administrative Assistant beginning on February 13, 2020, and her last day worked was March 4. The employer does not have potential employees submit an application nor do they run a background check prior to hiring an employee. Marjorie Wood, Manager/Owner, also does not ask candidates about their criminal history during job interviews.

On March 4, Wood learned that the claimant had pled guilty to theft from a previous employer. She asked the claimant who acknowledged she pled guilty to an aggravated misdemeanor related to theft. Wood stated she wanted to speak with the claimant's attorney, among other

individuals, and could not have the claimant working in an accounting firm if she had a criminal background related to theft. The claimant was sent home.

On March 11, Wood spoke to the claimant and indicated she still wanted to speak with the claimant's attorney, but stated "it was not looking good." (Claimant's Testimony) The claimant would not be able to return to work unless the attorney could assure Wood that everything had been "cleared up." (Wood's Testimony) The claimant told Wood that she was no longer interested in returning to work for the employer.

During her employment, the employer (account number 180908) paid the claimant \$1,339.00 in gross wages; however, the employer did not report the wages paid to Iowa Workforce Development (IWD) on its quarterly report. Whether the employer failed to report wages paid to the claimant has not been investigated by the Tax Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

...

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 provides, in relevant part:

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.

...

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

This definition of misconduct 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 unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left her employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It 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 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).

The employer has not met the burden of proof to establish that the claimant voluntarily quit employment. Based on the record created, the claimant had previously pled guilty to a charge of theft and the employer could not employ somebody with a criminal background that included theft. The employer has not established that the claimant had work to return to after March 11, and that she made a voluntary choice to the end the employment relationship. Therefore, the case will be analyzed as a discharge.

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). In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy. However, if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The issue is not whether the employer made a correct decision in separating the 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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).

The employer has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The claimant did not mislead the employer or fail to disclose her criminal plea, because the employer did not ask. The claimant did not engage in any conduct while employed with the employer that would constitute misconduct. Therefore, benefits are allowed, if the claimant meets all other eligibility requirements.

Whether the employer failed to report wages paid to the claimant is remanded to the Tax Bureau for investigation.

DECISION:

The April 12, 2011, reference 04, unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

REMAND:

Whether the employer failed to report wages paid to the claimant is remanded to the Tax Bureau for investigation.



Stephanie R. Callahan
Administrative Law Judge

July 9, 2021
Decision Dated and Mailed

src/mh