IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

TERESA A BEAL
Claimant

GRINNELL PUB INC
Employer

APPEAL NO. 19A-UI-00122-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/09/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Teresa Beal filed a timely appeal from the December 31, 2018, reference 01, decision that held she was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Beal voluntarily quit on December 5, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on February 4, 2019. Ms. Beal participated. Lonnie Lett represented the employer. Exhibit B was received into evidence. The hearing record was left open for the limited purpose of allowing the parties to submit a complete record of relevant text message correspondence. Over the noon hour on February 4, 2019, Ms. Beal submitted documentation of the text message exchange, which was received into evidence as Exhibit C.

ISSUES:

Whether Ms. Beal voluntarily quit without good cause attributable to the employer.

Whether Ms. Beal was discharged for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lonnie Lett owns and operates Grinnell Pub, Inc., a restaurant pub. Teresa Beal began her employment with Grinnell Pub in 2016, became the full-time General Manager that same year, and continued as General Manager to the end of her employment. Ms. Beal last performed work for the employer on December 5, 2018. Ms. Beal's work hours were 3:00 p.m. to roughly 2:00 a.m., Tuesday through Saturday. Mr. Lett was Ms. Beal's immediate supervisor.

As General Manager, Ms. Beal was responsible for performing or facilitating all aspects of restaurant operations. Those duties included serving food and drink to customers, cooking, stocking product, stocking ice, cleaning, and washing glasses. Stocking the cooler was a task that Mr. Lett ordinarily performed, rather than a task that Ms. Beal ordinarily performed. The task of taking out the trash ordinarily fell to someone other than Ms. Beal so that she was not placing herself at risk at closing time.

In November 2018, Ms. Beal underwent surgery for a non-work related medical condition that she describes as a feminine issue. Ms. Beal thereafter returned to her work duties, but with a 20-pound lifting restriction. Ms. Beal was able to perform some but not all of her regular work duties. Ms. Beal and Mr. Lett have differing perceptions regarding the extent to which Ms. Beal was able to perform her duties following the November surgery. Mr. Lett perceived that Ms. Beal was unable to do much work beyond serving drinks and cooking food and that he had to step to ensure appropriate operation of the business. Ms. Beal perceived that she could and did perform all of her regular duties except stocking ice. Though Ms. Beal had ongoing pain issues and had a prescription for pain medication, she avoided taking pain medication at work and instead took her pain medication after her shift had ended.

Ms. Beal's first surgery did not resolve her health issues and it was necessary for Mr. Beal to undergo a second surgery on December 6, 2018. In anticipation of the second surgery, Ms. Beal spoke with Mr. Lett regarding her need for a week or two off following the surgery. With that in mind, Mr. Lett scheduled another employee to work the evening shift through Tuesday, December 18, 2018 and anticipated that Ms. Beal would return to work that day.

On December 6, 2018, Ms. Beal's doctor provided her with a note, dated December 6, 2018, that took her off work for 7 days and that released her to return to work on December 13, 2018 with a 20-pound lifting and pulling restriction.

Ms. Beal's subsequent separation from the employment came about through a text message exchange between Mr. Lett and Ms. Beal that started on December 11, 2018 and continued in the next day. Prior the text message exchange, Ms. Beal told Mr. Lett that she would be released to return to work on December 13, 2018 with a 20-pound lifting and pulling restriction and that she expected to be off medical restrictions entirely by December 18, 2018. On December 11, 2018, Mr. Lett sent Ms. Beal the following message: "Need you at 100% when you return, have have [sic] scheduled labor until Tuesday the 18th, will be your return date, give me a heads up if you can't make it back by then, take care!" Ms. Beal replied, "I believe I told you one week, so planning on returning this Thursday. ??" Mr. Lett replied, "18th is your return date." Ms. Beal provided a one-word reply, "13th." This prompted Mr. Lett to respond, "I'm telling you you're not telling me, this is my place." Ms. Beal replied, "Oh. okay. I'll drop my key off tomorrow then." Mr. Lett asked, "You resigning?" Ms. Beal replied, "I'm spending time with my grandkids right now. We can talk tomorrow when you're sober." This provoked Mr. Lett to respond, "Your assumption that I'm not sober is ignorant, i would like to still have you work here, enjoy your time with you [sic] grandkids. Be here at 2:00, we will not be having these types of conversations during working hours." By this statement, Mr. Lett meant that he expected Ms. Beal to appear at the workplace for a meeting at 2:00 p.m. on December 12, 2018, though she was not released to return to work until December 13, 2018.

The text message exchange continued later that evening when Ms. Beal wrote, "Well apparently Jamie has already been telling people I quit. Maybe he should become your "general manager." Seems he has some people skills. And he's definitely "more fun" than I." Mr. Lett replied, "You shouldn't listen to all you here [sic], unless it's out of my mouth." Ms. Beal replied,

> Truth. I had a super good relaxing weekend and I come home to this. I'm so over it. I've pretty much given my all this past two years. I love you and all my customers, irritating as they can be, but I'm kind of lost right now. He doesn't just assume shit and spread it around for no reason.

Ms. Beal did not report to the workplace at 2:00 p.m. on December 12. That evening, Ms. Beal used her phone to send Mr. Lett a photocopy of the medical release that released her to return to work on December 13 with the lifting restriction. This prompted Mr. Lett to respond, "I've scheduled help here until the 18th, you are not welcome here tomorrow, why were [you] not here at 2:00?" Ms. Beal replied, "Ahm [sic], because I have a life and you can't just dictate when I'm available." Mr. Lett asked, "Do you still [want] to work here or not, last time I'm asking, yes or no?" Ms. Beal sent a one-word response, "Whatever." This provoked Mr. Lett to ask, "Yes or no!" Mr. Lett soon added, "Yes or no now!!" When Ms. Beal did not reply, Mr. Lett wrote, "I'll take your resignation from the prior conversation, you no longer work here. No need to drop off the key, locks have been changed." The conversation broke off there. That parties next had contact about a week later, but did not further discussion Ms. Beal returning to the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
> c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
> d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *See Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See Iowa Administrative Code rule 871-24.25.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.,* 494 N.W.2d 660 (1993).

Based on the law cited above and the reasons set forth below, the administrative law judge concludes that Ms. Beal was discharged and did not voluntarily quit. Because Ms. Beal did not work on Sundays and Mondays, the dispute over the return-to-work date was limited to three working days, December 13, 14 and 15. Mr. Lett had a reasonable basis for designating December 18 as Ms. Beal's return-to-work date. The date was based on the discussion he and

Ms. Beal had prior to the December 6, 2018 surgery, regarding the amount of time she would need to be away from work, one to two weeks. In light of Ms. Beal's need to recover from her surgery and Mr. Lett's need to have predictable staffing levels, Mr. Lett drafted a work schedule that he reasonably believed would address both concerns. Ms. Beal reasonably desired to return to work on December 13, 2018 with the temporary 20-pound lifting restriction. Both parties veered off the path or reasonableness during the December 11 text message exchange. It was Ms. Beal who raised the topic of separating from the employment by stating that she would drop off her key the next day. A reasonable person would interpret such a comment as indicating an intention to leave the employment and would look to see whether there was an overt act to carry out the intention. It was clear at that point in the exchange that Mr. Lett had given no thought to severing the employment relationship. When Mr. Lett inquired whether the comment about dropping off the key meant Ms. Beal was resigning, Ms. Beal responded with a somewhat offensive message that deferred discussion to the following day. Mr. Lett responded with a somewhat offensive message that went on to state that he wanted Ms. Beal to continue in the employment. Ms. Beal's comments later that evening, that Mr. Lett promote another employee to general manager and that she was "so over it" continued to suggest an intention to leave the employment. Mr. Lett unreasonably directed Ms. Beal to appear for a meeting on December 12, prior to her medical release date. Ms. Beal's sending a copy of her medical release to Mr. Lett on December 12 signaled at once both her challenge to a return-to-work date beyond December 13 and her willingness to continue the discussion about her employment. Mr. Lett's December 12 question regarding if Ms. Beal still wanted to work for him indicated that at that point in the exchange, Mr. Lett still had not made a decision to sever the employment relationship. Ms. Beal's "Whatever" reply and subsequent silence, as equivocal and non-productive as it was, did not constitute a quit notice. Nor was there an overt act, such as delivering the key, to carry out a quit. Instead, Mr. Lett let his emotions get the best of him and severed the employment relationship with the following message: "I'll take your resignation from the prior conversation, you no longer work here. No need to drop off the key, locks have been changed."

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:
>
> 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:

> 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 a discharge matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board,* 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). It stands to reason, that employees have a similar right to expect decency and civility from their employer.

The weight of the evidence fails to establish misconduct in connection with the employment that would disqualify Ms. Beal for unemployment insurance benefits. This case presents two parties who each acted reasonably and unreasonably in the context of the same text message exchange. Ms. Beal was understandably upset about not being allowed to return to work on December 13. Mr. Lett was understandably concerned with running his business in the manner

he deemed prudent and cost effective. Mr. Lett unreasonably expected Ms. Beal to bend to his will as he communicated in an unnecessarily heavy-handed manner. Ms. Beal unreasonably danced around the notion that she might quit. Ms. Beal's utterances did not rise to the level of insubordination within the meaning of the law. Ms. Beal got close to the line when she referenced Mr. Lett not being sober. Taken in context, the administrative law judge concludes that Ms. Beal did not cross the line from unreasonableness to willful and wanton disregard of the employer's interests with that utterance. The does not establish a pattern of Ms. Beal unreasonably refusing reasonable employer directives.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Beal was discharged for no disqualifying reason. Accordingly, Ms. Beal is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The December 31, 2018, reference 01, decision is reversed. The claimant was discharged on December 12, 2018 for no disqualifying reason. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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