

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LESLIE C TRUE
Claimant

CSOI CORP
Employer

APPEAL 21A-UI-02734-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/25/20
Claimant: Respondent (5)

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

STATEMENT OF THE CASE:

On January 8, 2021, CSOI Corp (employer/appellant) filed an appeal from the December 30, 2020 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on October 22, 2020 without a showing of misconduct.

A telephone hearing was held on March 26, 2021. The parties were properly notified of the hearing. Employer participated by District Supervisor Steve Sparling. Leslie True (claimant/respondent) participated personally.

Employer's Exhibits 1-3 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time general manager. Claimant's first day of employment was June 1, 2020. The last day claimant worked on the job was October 22, 2020. Claimant's immediate supervisor was Sparling. Claimant resigned on October 22, 2020.

Claimant resigned after being demoted to an assistant manager position. The demotion meant a decrease in pay. Claimant was demoted because Sparling believed the size of the store and the number of employees claimant was overseeing was too much for him. Claimant was sometimes not as prompt in submitting reports as Sparling would have liked. Sparling also felt that claimant was being too negative with him and with other employees, which he believed was hurting morale.

Sparling had in the past asked claimant to be more positive when interacting with other employees. However, he had not been formally disciplined or warned he would be demoted if this did not improve.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the December 30, 2020 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on October 22, 2020 without a showing of misconduct is MODIFIED with no change in effect.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

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 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.

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 Code section 96.5(1)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.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

These principles apply also to demotions, as was the case here. An employer may discharge or discipline an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation or discipline, employer incurs potential liability for unemployment insurance benefits related to that separation or discipline.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

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. 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). 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).

The administrative law judge finds employer has not carried its burden of proving claimant's demotion was for a current act of substantial misconduct such that it was justified. The administrative law judge further finds claimant has carried his burden of proving the voluntary leaving was for good cause attributable to employer. As such, the separation from employment was not disqualifying and benefits are allowed, provided claimant is otherwise eligible.

Claimant was demoted because Sparling believed the size of the store and the number of employees claimant was overseeing was too much for him. Claimant was sometimes not as prompt in submitting reports as Sparling would have liked. Sparling also felt that claimant was being too negative with him and with other employees, which he believed was hurting morale. Sparling had in the past asked claimant to be more positive when interacting with other employees. However, he had not been formally disciplined or warned he would be demoted if this did not improve.

While employer was generally dissatisfied with claimant's performance, there is no indication that claimant was deliberately or even negligently performing poorly. The administrative law judge finds any failure in good performance was the result of inability or incapacity, and that claimant's general negativity does not rise to the level of misconduct.

Because claimant's demotion was not for an act of substantial misconduct, claimant's resignation was with good cause attributable to employer. The demotion meant a decrease in pay and as such was a substantial change in the contract of hire justifying resignation. The decision is modified solely to reflect that the separation was a voluntary resignation rather than a discharge.

DECISION:

The December 30, 2020 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on October 22, 2020 without a showing of misconduct is MODIFIED with no change in effect. Claimant resigned with good cause attributable to employer. The separation from employment is therefore not disqualifying and benefits are allowed, provided claimant is otherwise eligible.



Andrew B. Duffelmeyer
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April 5, 2021
Decision Dated and Mailed

abd/scn