

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEIDRE L SMITH
Claimant

APPEAL 20A-UI-08680-BH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

METAL-TECH MFG INC
Employer

OC: 04/26/20
Claimant: Appellant (2)

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause
Iowa Code section 96.5(2)(a) – Discharge for Misconduct
Iowa Administrative Code rule 871-24.32(1)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Deidre L. Smith appealed the July 13, 2020 (reference 01) unemployment insurance decision that denied benefits. The agency properly notified the parties of the hearing. The undersigned presided over a telephone hearing on September 3, 2020. Smith participated personally and testified. Metal-Tech Mfg Inc. (Metal-Tech) did not participate.

ISSUES:

1. Was Smith's separation from employment with Metal-Tech a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?
2. Did Metal-Tech discharge Smith for job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Metal-Tech hired Smith on May 13, 2019. Smith worked full time doing clerical and inventory management. Smith's immediate supervisor was Karen Enslo. Metal-Tech discharged Smith on April 28, 2020.

COVID-19 began spreading across the state and nation in the spring of 2020. Smith has three children; two were in school and the third was in daycare. The schools closed because of COVID-19, as did the daycare provider where Smith's toddler went while she was at work.

Smith is the primary caregiver of her children. Her husband is a farmer. In the spring, she and her children see him about three hours each day due to the work required of his job. Smith's

children stayed home alone for two weeks, but they were falling behind in school and it was unfair to ask the older kids to watch her toddler.

Smith asked Metal-Tech for one week off to help get her kids caught up in school. After some discussion, Metal-Tech granted her request. The parties agreed to extend the leave of absence multiple times. Ultimately, Smith was on a leave of absence from April 1 through April 26, 2020.

With about two weeks left in the school year, Metal-Tech asked Smith to return to work to clean the bathrooms and sanitize the office. Smith discussed the offer with her husband. They decided it would be best if she asked to extend her leave through the end of the school year. Smith requested to extend her leave of absence another two weeks. Metal-Tech responded to Smith's request by discharging her, ending her leave of absence and employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Metal-Tech discharged Smith from employment for no disqualifying reason.

In appeals such as this one, the issue is not whether the employer made a correct decision in discharging 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).

Under Iowa Code section 96.5(2)(a), an individual is disqualified for benefits if the employer discharges the individual for misconduct in connection with the individual's employment. The statute does not define "misconduct." But Iowa Administrative Code rule 871-24.32(1)(a) does:

"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.

The Iowa Supreme Court has ruled this definition accurately reflects the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Administrative Code rule 871-24.32(4) states:

The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff

exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Under Iowa Administrative Code rule 871-24.32(8):

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.

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).

Metal-Tech did not participate in the hearing. Metal-Tech did not present any evidence regarding its reason for discharging Smith. The evidence shows that it is more likely than not that Metal-Tech discharged Smith because she asked to extend her leave of absence through the end of the school year. Requesting an extension of a leave of absence does not constitute misconduct under Iowa Code section 96.5(2)(a) and rule 871-24.32(1)(a). Regular unemployment insurance benefits are therefore allowed under Iowa law.

Under Iowa law, an individual is not eligible for regular unemployment insurance benefits if the individual is on a leave of absence agreed to with the employer. During such a leave of absence, the individual is considered to be unavailable for work because the leave constitutes a voluntary period of unemployment. See Iowa Code § 96.4(3); see also 871-24.22(2)(j), 871-24.23(10). However, under the federal CARES Act, an individual ineligible for regular unemployment insurance benefits under state law because the individual is not able and available for work may qualify for Pandemic Unemployment Assistance (PUA) if the individual is unable to work because:

A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work[.]

U.S. Dep't of Labor, Unemployment Ins. Program Letter 16-20, "Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Program Operating, Financial, and Reporting Instructions," p. 3 (Apr. 5, 2020), available online at: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_acc.pdf (last viewed Sep. 24, 2020) (other parts of the UIPL amended by subsequent Changes). More information about PUA is available on the agency website at: www.iowaworkforcedevelopment.gov/pua-information.

This decision does not address whether Smith might be eligible for PUA under the CARES Act during the period of time she on a leave of absence to care for her children, who could not go to school or daycare because those facilities closed due to COVID-19. In order to get a decision on whether Smith is eligible for PUA under the CARES Act, she must apply with Iowa Workforce Development using the online form at: www.iowaworkforcedevelopment.gov/pua-application.

DECISION:

The July 13, 2020 (reference 01) unemployment insurance decision is reversed. Metal-Tech discharged Smith from employment for no disqualifying reason. Benefits are allowed, provided Smith is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

A handwritten signature in black ink, appearing to read "Ben Humphrey", is written over a light gray rectangular background.

Ben Humphrey
Administrative Law Judge

September 28, 2020
Decision Dated and Mailed

bh/sam