IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MELISSA M RUSCH Claimant **502 GRILL HOUSE LLC** Employer	**APPEAL 21A-UI-00704-JC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/15/20** **Claimant: Appellant (2R)**

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

STATEMENT OF THE CASE:

The claimant/appellant, Melissa M. Rusch, filed an appeal from the November 20, 2020 (reference 01) Iowa Workforce Development ("IWD") unemployment insurance decision that denied benefits. The hearing was previously scheduled but postponed at claimant's request to obtain counsel. The parties were properly notified about the hearing. A telephone hearing was held on March 3, 2021. The claimant participated. The employer, 502 Grill House LLC., participated through Mari Beth Toomsen, owner. Shawn Toomsen, co-owner also testified.

The administrative law judge took official notice of the administrative records. Claimant Exhibit A was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

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 waitress beginning in 2017, and last performed work on March 15, 2020.

Claimant was temporarily laid off from March 15, 2020 until May 11, 2020 due to a proclamation by Governor Reynolds in response to COVID-19. On May 11, 2020, employer held a meeting with staff and claimant attended. During the meeting, the employer discussed returning to work and an argument ensued about tips and scheduling.

Claimant left the meeting upset, and before it was over. Employer alleges claimant said, "I'm out of here" when leaving. Claimant denied making the statement. Claimant sent a letter to

employer dated May 15, 2020 regarding the meeting and her employment status. See Claimant Exhibit A.

In the letter, claimant inquired about why she had not been put on the schedule. She asked for an update by May 29, 2020. Employer responded in its own letter saying claimant left the meeting on May 11, 2020 and was considered to have quit. Continuing work was not available to claimant.

Following separation, claimant worked for Eldora Firehouse LLC. The issue of claimant's permanent separation with this employer has not yet been addressed by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation is not disqualifying.

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.

Iowa Admin. Code r. 871-24.1(113)a provides:

> 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.

For the period of March 15, 2020 through May 11, 2020: Claimant was temporarily laid off due to a lack of work. Benefits are allowed for this period, provided she is otherwise eligible.

Effective May 12, 2020, the issue becomes who initiated the permanent separation.

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).

Employer stated claimant quit when she walked out of the meeting. Claimant contacted employer shortly after the meeting to inquire about her employment status and being scheduled. This is not indicative of an intent to sever the employment. Employer responded by saying because claimant had left the meeting upset on May 11, 2020, they accepted it as her resignation. See Claimant Exhibit A.

In this case, the claimant did not have the option of remaining employed nor did she express intent to terminate the employment relationship. 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).

Iowa Administrative Code rule 871-24.32(1)a provides:

> "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).

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, but 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 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." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Based on the evidence presented, the administrative law judge concludes the conduct for which the claimant was discharged was an isolated incident of poor judgment and inasmuch as the employer had not previously warned the claimant about the issue leading to the separation, it 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. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. Training or general notice to staff about a policy is not considered a disciplinary warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden

of proof in establishing that the claimant's discharge was due to job-related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

The issue of claimant's permanent separation with Eldora Firehouse LLC is remanded to the Benefits Bureau for an initial investigation.

DECISION:

The unemployment insurance decision dated November 20, 2020, (reference 01) is reversed. The claimant's separation is non-disqualifying. Claimant is allowed benefits, provided she is otherwise eligible.

REMAND: The issue of claimant's permanent separation with Eldora Firehouse LLC is remanded to the Benefits Bureau for an initial investigation.

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Jennifer L. Beckman
Administrative Law Judge
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March 8, 2021
Decision Dated and Mailed

jlb/scn