

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KYMBERLY D PETERS

Claimant

APPEAL 20A-UI-11299-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANKENY DANCE & PERFORMING ARTS

Employer

OC: 06/21/20

Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the September 10, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 5, 2020, at 11:00 a.m. Claimant participated with her non-attorney representative, Harold Peters. Employer participated through Mark Feree, Owner and General Manager. Claimant's exhibits 1 – 6 were admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time Instructor and Assistant Manager from August 1, 2014 until her employment with Ankeny Dance & Performing Arts ended on June 22, 2020.

Claimant signed a personal services contract on May 19, 2014. The contract included covenants not to compete and not to solicit employer's customers. The covenant not to compete prohibited claimant from participating in the same business within a 20-mile radius within two years of the end of employment. The covenant not to solicit employer's customers prohibited solicitation during employment or within two years of the end of employment.

On June 15, 2020, claimant tendered her written resignation effective July 15, 2020. Claimant quit because employer would not sell its business to claimant and claimant wanted her own studio. Employer agreed that claimant could work out her notice period.

After submitting her resignation, claimant used her company email address to send an email to the competition dance team members informing them of her resignation, thanking them for their support and wishing them luck. Claimant posted information on social media stating that she was opening her own studio in Urbandale, Iowa. On June 22, 2020, employer terminated

claimant's employment after learning of the email and social media post, because employer believed claimant had breached the parties' contract by opening a studio within a 20-mile radius of employer's studio and by soliciting employer's customers to join her studio.

Claimant consulted an attorney prior to resigning and posting on social media in an effort not to violate the parties' contract. Claimant had not identified a specific location in Urbandale, Iowa for her studio. When claimant learned that Urbandale, Iowa was within a 20 mile radius of employer's studio, claimant cancelled her plans to open a studio in that town. Claimant's social media post offered general information about the studio she was opening.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit her employment without good cause attributable to employer, but was discharged by employer for no disqualifying reason prior to the resignation effective date. Benefits are allowed until the resignation effective date, provided claimant is otherwise eligible, and denied thereafter.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

Iowa Admin. Code r. 871-24.25(19), (38) provide:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(19) The claimant left to enter self-employment.

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

Iowa Code section 96.5(2)(a) provides:

An individual shall be *disqualified for benefits*:

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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). 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).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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).

In this case, claimant's written resignation is both evidence of her intention to sever the employment relationship and an overt act of carrying out her intention. Claimant voluntarily quit her employment. Claimant provided her letter of resignation on June 15, 2020. Claimant's resignation was to be effective July 15, 2020.

Employer discharged claimant on June 22, 2020 because it believed claimant had breached her employment contract by opening a dance studio within a 20-mile radius of employer's studio and by soliciting employer's customers. Claimant did not open a dance studio and, thus, did not breach the covenant not to compete. Claimant's email to dance team members did not mention that she was opening a studio or solicit team members to join her studio. Claimant's social media post was not targeted to employer's customers. There is no evidence that claimant

solicited employer's customers. While employer may have had a good business reason for terminating claimant's employment, that reason does not constitute disqualifying job-related misconduct. Accordingly, claimant is eligible for benefits from June 22, 2020 until July 15, 2020, provided she is otherwise eligible.

Claimant quit in order to open her own dance studio. While entering self-employment may be a good personal reason to quit employment, it is not attributable to employer. Claimant has not met her burden of proving she voluntarily quit her employment for good cause attributable to employer. Benefits are denied effective July 15, 2020.

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The September 10, 2020 (reference 01) unemployment insurance decision is modified in favor of appellant. Claimant was discharged prior to the effective date of her resignation. Claimant was discharged for no disqualifying reason. Benefits are allowed from June 22, 2020 until July 15, 2020, provided claimant is otherwise eligible. Claimant voluntarily quit without good cause attributable to employer. Benefits are denied effective July 16, 2020 and until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



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November 23, 2020
Decision Dated and Mailed

acw/mh