

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THERESA A MCDONOUGH
Claimant

APPEAL 19A-UI-05697-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES
Employer

**OC: 06/23/19
Claimant: Respondent (1R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations
Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant, Hillcrest Family Services, filed an appeal from the July 15, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits because the claimant was separated from employment due to a staff reduction or elimination of position. The parties were properly notified about the hearing. A telephone hearing was held on August 12, 2019. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through President/CEO Julie Heiderscheit. The Employer’s Exhibit 1 was admitted. The administrative law judge took official notice of the administrative record, specifically the fact-finding documents and the claimant’s wage history. 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:

Does the claimant have reasonable assurance for the 2019-2020 school year with Hillcrest Family Services?

Was the claimant laid off due to a lack of work, did the claimant voluntarily leave the employment with good cause attributable to the employer, or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer’s account be waived?

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 Special Education teacher beginning August 9, 2018, and her last day worked was June 10, 2019. The employer had subcontracted for years with Dubuque Community School Districts (DCSD) pursuant to an agreement under Iowa Code section 28E to operate a special education program on its campus. The agreement ended upon completion of the 2018-2019 school year. The claimant's job as a Special Education teacher for Hillcrest Family Services was eliminated effective June 10, 2019.

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$3,080.00 since establishing a claim for benefits. Daniel Nettie was called for the scheduled fact-finding interview on July 12, 2019 but did not respond to the call or voicemail.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the claimant has reasonable assurance for the 2019-2020 school year with Hillcrest Family Services. She did not.

A claimant who works for an educational institution is not eligible to receive benefits during the period between two successive academic years or terms when the claimant performs services in the first of such academic years or terms and has reasonable assurance that she will perform services for the second of such academic years or terms. Iowa Code §96.4(5).

The claimant was not offered a teaching position from this employer for the following school year and cannot have reasonable assurance with this employer. However, whether the claimant had reasonable assurance of educational employment with DCSD (account number 101899) for the 2019-2020 school year has not been investigated or adjudicated by the Benefits Bureau of Iowa Workforce Development (IWD) and will be remanded to address the issue.

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit, but was involuntarily separated from employment for no disqualifying reason when she was laid off due to the elimination of her position.

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. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Admin. Code r. 871-24.1 provides:

Definitions.

Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) 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.

An unemployed person who meets the basic eligibility criteria receives benefits unless they are disqualified for some reason. Iowa Code § 96.4. 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). Generally, a quit is defined to be 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." Furthermore, 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).

In this case, the claimant did not have the option of remaining employed as a Special Education teacher at the Dubuque location for Hillcrest Family Services, 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 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).

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 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). 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, the employer has not alleged that the claimant engaged in any misconduct leading to the end of her employment. The employer lost its contract with DCSD and the claimant's position was eliminated. Benefits are allowed based on this separation, provided the claimant is otherwise eligible.

As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

REMAND: Whether the claimant had reasonable assurance of educational employment with DCSD (account number 101899) for the 2019-2020 school year is remanded to the Benefits Bureau of IWD for a fact-finding interview with notice to the claimant and DCSD and an unemployment insurance decision issued to both parties with appeal rights.

DECISION:

The July 15, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

REMAND:

Whether the claimant had reasonable assurance of educational employment with Dubuque Community School District (account number 101899) for the 2019-2020 school year is remanded to the Benefits Bureau of IWD for a fact-finding interview with notice to the claimant and DCSD and an unemployment insurance decision issued to both parties with appeal rights.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn