IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MICHELLE B NICHOLS Claimant **THE STATION LLC** Employer	**APPEAL 17A-UI-12058-CL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/22/17** **Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
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 filed an appeal from the November 13, 2017, (reference 01) unemployment insurance decision that allowed benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 14, 2017. Claimant participated. Employer participated through owner Melissa Hodapp and assistant manager Mikaila Huedetohl.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did 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: Claimant began working for employer on June 24, 2017. Claimant last worked as a full-time cashier. Claimant was separated from employment on October 23, 2017, when she was discharged.

During her employment, claimant had difficulty getting along with a co-worker named Angie. Claimant considered resigning because of the difficulties. Claimant was scheduled to work on Saturday, October 21, 2017, and Sunday, October 22, 2017.

On Friday, October 20, 2017, store manager Dawn Fowler resigned and left abruptly. Fowler told owner Melissa Hodapp that claimant had also resigned. Hodapp then sent claimant a text message asking her if she resigned. Claimant stated she was at a medical appointment with a family member and did not respond to the question.

Later that day, assistant manager Mikaila Huedetohl sent claimant a text message asking her if she resigned. Claimant initially told Huedetohl to write her off the schedule, but then instead requested not to be scheduled to work with certain employees. Huedetohl stated the request would drastically reduce claimant's work hours and asked if claimant would like to have a "sit down" with the owners of the store and Angie. Claimant stated her phone was dying and that she would send a text message later.

That evening, claimant contacted another co-worker and asked him to cover her shift the next day.

On Saturday, October 21, 2017, claimant did not appear for work and her co-worker appeared at work on her behalf, although this was not authorized by employer. At the end of the shift, claimant brought her shirt and keys into the store and handed them to Huedetohl. They talked about claimant's problems with Angie. Claimant never definitively stated that she resigned. Claimant stated she would return to the store on Monday at 9:00 a.m. to discuss her future employment with owner, Melissa Hodapp.

Claimant did not appear for work on Sunday, October 22, 2017, did not find anyone to replace her on the shift, and did not report her absence. Therefore, Huedetohl was required to cover the shift.

On October 23, 2017, claimant sent Huedetohl a text message at 8:48 a.m. stating she would be there shortly. Huedetohl did not question this statement. When claimant arrived at the store, Hodapp stated she did not have time to meet with her. Claimant left and sent a text message to Huedetohl at 11:49 a.m. requesting to be put on the schedule on Saturday, Sunday, and Mondays. Huedetohl responded by stating that claimant resigned when she turned in her uniforms and keys and had a no-call/no-show absence and was no longer considered an employee. Claimant denied resigning. Throughout the ensuing correspondence, Huedetohl remained adamant that employer interpreted claimant's actions as a resignation, but never accused claimant of explicitly stating she resigned.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether claimant was discharged or resigned from employment. The employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge. Iowa Code § 96.6(2). 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).

In this case, claimant was frustrated due to a dispute with a co-worker named Angie. Claimant sent employer some mixed messages while attempting to work through this problem. While it is understandable that employer became frustrated when claimant dropped off her shirts and keys and had a no-call/no-show absence, ultimately claimant stayed in contact with employer and continued to pursue working through the conflict and being scheduled to work. Employer made the ultimate decision to end the relationship. Therefore, I find claimant was discharged and did not resign.

The next issue is whether claimant was discharged for job-related misconduct.

Iowa Code § 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 individual shall be disqualified for benefits 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:

> 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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). 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, employer ended the employment relationship after claimant dropped off her shirts and keys and then had a no-call/no-show absence. It is understandable that employer was frustrated with claimant by the time it chose to end her employment. But ultimately, claimant was attempting to work out the issue she had with her co-worker and remain employed even if she did not choose to do so in the most professional manner. Most important here is that employer never warned claimant that she must correct the behavior and appear for her next shift ready to work or her employment would be terminated. Claimant had no previous disciplinary warnings regarding her attendance or otherwise. 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. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Employer failed to establish claimant was terminated for job-related misconduct.

Because claimant is allowed benefits, the issues regarding overpayment are moot and will not be discussed further in this decision.

DECISION:

The November 13, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn