IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

TAMMY M BACHMANN
Claimant

THARALDSON LODGING I-A INC
Employer

APPEAL NO: 09A-UI-04010-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/11/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Tharaldson Lodging I-A, Inc. (employer)) appealed a representative's March 3, 2009 decision (reference 01) that concluded Tammy M. Bachmann (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 8, 2009. This appeal was consolidated for hearing with one related appeal, 09A-UI-04011-DT. The claimant participated in the hearing. Jennifer Daniel appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 27, 2005. She worked part time (20-32 hours per week) as a breakfast host and housekeeper in the employer's Des Moines, Iowa hotel. Her last day of work was December 26, 2008.

On December 26 the claimant was not feeling well and had been having a dispute with the head housekeeper regarding a housekeeping cart the claimant had been using and had prepared for use but which the head housekeeper had taken for her own use to another area. The claimant complained once to Ms. Daniel, the general manager, who sent her back to talk to the head housekeeper. When the head housekeeper maintained the claimant needed to get another cart prepared for her own use, the claimant told the head housekeeper that she was feeling so bad that she was going to go ahead and go home.

The claimant stopped by Ms. Daniel's office again on her way out. Ms. Daniel had been planning on discussing some performance and attitude coachings with the claimant later that day, and began generally expressing concern to the claimant that it appeared the claimant was

not happy in her job. She inquired of the claimant whether she even wanted her job; as the claimant left, it was with the statement that she was to let Ms. Daniel know of her intention. The claimant proceeded to clock out and leave, believing that Ms. Daniel understood she was leaving because of feeling ill. Ms. Daniel had known that the claimant had been feeling ill, but had not understood the claimant was going home. When she later learned that the claimant had left without finishing her duties, she determined the claimant had voluntarily quit.

The claimant was not scheduled for work on December 27. She was scheduled for December 28, but she called in well in advance of her shift. On December 29 Ms. Daniel contacted the claimant and indicated she need not come in and need not call in, as she considered the claimant's employment ended.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that she quit by leaving on December 26 before finishing her work. The claimant advised the head housekeeper she was going home because she was ill, and at the least left Ms. Daniel with the understanding that if she was going to quit she would advise Ms. Daniel; she also called in an absence on her next scheduled workday. She did not evidence an intent to quit. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct

must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was the perception that she was unhappy in her work and her leaving work before completing her duties on December 26. Under the circumstances of this case, the claimant's behavior was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's March 3, 2009 decision (reference 01) is affirmed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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