

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WHITNEY A WANDERSCHIED
Claimant

APPEAL NO: 11A-UI-04779-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VON MAUR INC
Employer

**OC: 02/20/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's April 1, 2011 determination (reference 03) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for non disqualifying reasons. The claimant participated in the hearing with her attorney, Harold Widdison. Joy Place appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment or did the employer discharge her for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2010 at a Minnesota location as an executive trainee. After the claimant worked about three months as a department manager, the employer offered her a job as a buyer at the corporate office in Davenport. In addition to new job responsibilities and paying the claimant to relocate, the employer also offered to increase her salary increase by over \$10,000 a year. The claimant understood it would take her six months to a year to learn about all aspects of the new job. The claimant accepted the promotion and moved to Davenport.

The claimant started working in Davenport in late November 2010. For three weeks, the claimant worked on the sales floor.

When the claimant started training to become a buyer, she understood that when her supervisor, Courtney, talked to her about issues or problems this was part of her training to become a buyer. During a couple of training sessions, Courtney reported the claimant was either dozing or did not appear interested in the training she was receiving. Prior to February 18, 2011, the claimant had no understanding her job as a buyer was in jeopardy.

On February 18, 2011, the employer informed the claimant that the employer concluded she did not possess the necessary skills to work as a buyer. Based on her supervisor's conclusions, the claimant could not work as a buyer after February 18. The employer wanted the claimant to go back to work at an unnamed store to work as a department manager. The employer asked the claimant where she wanted to work and gave her the weekend to think about this.

On February 21, the claimant talked to Place. When the claimant asked what position she could she have at the same salary, the employer told her that she would not be paid the same salary. Her salary would be reduced. Although the claimant asked what she could do to continue training to become a buyer, the employer informed her the decision had been made and she could no longer train to become a buyer. When the claimant wanted to continue to work as a buyer and would not accept a lower salary, the employer told the claimant she needed to submit a written resignation. The employer told the claimant what to write. The claimant wrote what Place told her to and then signed her name.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts do not establish that the claimant voluntarily quit her employment. Instead, the employer initiated the employment separation by informing the claimant she could not continue to work as a buyer because the employer concluded she did not have the necessary skills to become a successful buyer. Although the employer suggested that the claimant could possibly work at another store as a department manager, the claimant's salary would be \$5,000 to \$10,000 less and the employer did not tell her which store or departments she could be transferred to. For unemployment insurance purposes, the employer ended the claimant's employment on February 18, 2011, when the employer informed her she could no longer train to become a buyer.

The fact the claimant wrote a resignation statement that the employer told her she had to write and even told her what to write does not transform a discharge to a voluntarily quit situation.

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 Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had justifiable business reasons for ending the claimant's training and employment as a buyer, but the evidence does not establish that the claimant committed

work-connected misconduct. The claimant's supervisor did not warn the claimant her job was in jeopardy prior to February 18, 2011. The claimant's supervisor, who decided the claimant did not have the necessary skills to become a buyer, did not even testify at the hearing. For unemployment insurance purposes, the claimant is qualified to receive benefits as of March 20, 2011.

The fact the employer talked to the claimant about working as a department manager at an unknown location does not constitute a job offer.

DECISION:

The representative's April 1, 2011 determination (reference 03) is affirmed. The claimant did not voluntarily quit her employment. Instead, the employer discharged her by ending her employment as a buyer. The claimant did not commit work-connected misconduct. Therefore, as of February 20, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs