

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BETTY STIVERSON
Claimant

**HEARTLAND MIDWEST LLC
BURGER KING**
Employer

APPEAL NO. 14A-UI-10926-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/21/14
Claimant: Respondent (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Burger King (employer/appellant) appealed an unemployment insurance decision dated October 8, 2014, (reference 01), which held that Betty Stiverson (claimant/respondent) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 10, 2014. The claimant participated in the hearing. The employer witness was not available when called for the hearing but called in late and the hearing went forward.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a part-time crew member/team leader from August 17, 2012, through August 21, 2014, when she was discharged. She had earlier said she was quitting if she had to work under a certain manager but Manager Kayla Gardner told the claimant this manager had already quit. The claimant said she would go home and change so she could work her shift. She did that and had been working an hour when Ms. Gardner's manager had someone fire the claimant because she purportedly quit.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code Sections 96.5-1 and 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. The claimant was going to quit but changed her mind after she learned that the manager with whom she had issues had already quit.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The fact that the claimant returned to work and began working on August 21, 2014, confirms she did not quit her job.

The evidence shows the employer discharged the claimant on August 21, 2014, because she was going to quit but changed her mind. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. *Id.* The employer has not met its burden. The claimant was discharged but not for disqualifying misconduct. Benefits are therefore allowed.

DECISION:

The unemployment insurance decision dated October 8, 2014, (reference 01), is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs