

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMMIE J LAUTERWASSER
Claimant

GRINNELL REGIONAL MEDICAL CENTER
Employer

APPEAL 14A-UI-09384-L
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/17/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 5, 2014, (reference 01) decision that denied benefits because of voluntarily quitting the employment. After due notice was issued, a hearing was held on October 2, 2014, in Des Moines, Iowa. Claimant participated with her spouse, Doug Lauterwasser. Employer participated through human resource director Deb Nowacheck, interim director of physicians' services Amy Goliszek, and director of rural health clinics Sheryl Rutledge. Employer's Exhibits 1 through 3 were received. Claimant's Exhibits A and B were received.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time clinic RN from January 6, 2014, through August 19, 2014. Claimant had been working for Dr. McKnight in the hospital clinic. She applied for and received a transfer to an open position, with Rutledge as her new supervisor effective August 25. Rutledge called her on August 14 after she had gone home with a migraine headache and said she had heard claimant regularly missed nursing home appointment days and that she frequently texted on her phone while at work. Rutledge also asked her why she did not have bags packed for Dr. McKnight for traveling clinics and other issues that did not concern Rutledge since she was not her supervisor yet. Claimant said she did not like where the conversation was going. She called her supervisor Goliszek and left her a message about being upset with Rutledge and their conversation since she had already given her notice to Dr. McKnight. Goliszek called her back and said she would set up a meeting. Nowacheck called the meeting on Tuesday, August 19 with claimant, Rutledge and Goliszek to discuss the transfer. The conversation between claimant and Rutledge was mentioned so claimant showed the scheduled for nursing home days and the days she had been off work with approval.

Claimant brought up Rutledge's inquiry about why the bags were not packed. Rutledge denied saying that and claimant said she did. Rutledge stood up and said she did not need to take that from claimant. Claimant responded she did because she was a liar. Nowacheck said it was clear the two could not work together. Rutledge said she did not want claimant. Claimant asked Nowacheck if she was firing her. Rutledge said maybe claimant could work as a float in the hospital. Goliszek said nothing and Nowacheck did not mention job availability in the hospital. Claimant asked why Rutledge did not want her and Nowacheck told her that Rutledge went to her department and asked coworkers, including Dr. McKnight's office manager spouse, about her. Claimant said she had a migraine and was going home the rest of the week. Nowacheck asked her if she was going to finish the week with Dr. McKnight. Claimant replied that she probably would not. She did not say so at the time but the migraines, for which she has prescription medication, can last for more than a day. Nowacheck told her to hand in her badge and Rutledge directed claimant to turn in the rural clinic keys. Claimant made a statement of disbelief and said they would hear from her lawyer and left. There was no discussion of rescheduling or continuing the meeting to discuss options at another time when claimant did not have a headache.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

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).

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that she wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Because there was unclear communication between claimant and employer about the interpretation of both parties' statements about the status of the employment relationship; the issue must be resolved by an examination of witness credibility and burden of proof. Since most members of management are considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee, it is reasonably implied that the ability to communicate clearly is extended to discussions about employment status. Nowacheck's own testimony recounted that claimant initially said she was going home because of a headache for "the rest of the week." Claimant did not say anything about not returning to work the following week. The meeting was clearly truncated as the participants had not yet resolved where claimant would work once she recovered from the headache. Yet Nowacheck did not attempt to reschedule but verbally pushed claimant again. Since Nowacheck took claimant's leaving due to a headache as job abandonment, and claimant established a desire to continue working by stating only that she would be off work due to the migraine for "the rest of the week," claimant's interpretation of Nowacheck asking for her badge and Rutledge asking for her keys as a discharge was reasonable and the burden of proof falls to the employer.

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). "Balky and argumentative" conduct is not necessarily disqualifying. *City of Des Moines v. Picray*, (No. -__-__, Iowa Ct. App. filed __, 1986).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as claimant was merely upset with Rutledge and left the meeting because of a headache, the employer has not met the burden of proof to establish that claimant was insubordinate or was absent for any inexcusable reason. Benefits are allowed.

DECISION:

The September 5, 2014, (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld shall be paid to claimant.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css