IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

VICTORIA K CONRAD
Claimant

EASTERN IOWA TJ LC
Employer

APPEAL NO: 19A-UI-03718-JC-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/31/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 26, 2019, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 28, 2019. The claimant participated personally. Kevin O'Rourke and Scott Bledsoe, former employees, also testified on behalf of the claimant. The employer participated through Tina Helbing, general manager. Claimant Exhibits 1-17 were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit the employment with good cause attributable to employer or was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an assistant manager and was separated from employment on March 31, 2019. The evidence is disputed as to whether the claimant quit the employment or was discharged.

The claimant began employment in 2014. She had no prior warnings before separation. The employer expected the claimant would call the employer an hour before her shift if she was unable to work. On March 31, 2019, the claimant was scheduled to work until 10:00 p.m. The claimant began getting sick with stomach pains, to the point of crying in the back room (Bledsoe testimony). The claimant made an attempt to contact her manager, Tina Helbing, and left a voicemail around 4:45, asking her to call the store immediately. The claimant also called shift leaders, Marissa and Chad, to see if they could come to the store. The claimant finally left the store around 6:15 p.m. (Helbing testimony). The claimant left two employees unsupervised.

One of the employees notified Ms. Helbing of the claimant's departure. Around 7:15 or 7:30 p.m., the claimant received a text message from another store manager, Nicole, who was also Ms. Helbing's daughter. It stated, "I need your keys so I can do your fucking job" (Conrad testimony.) The claimant did not respond. After Mr. Bledsoe's other co-worker became flustered, she stated she wanted to close the store early and so they did, without permission. Mr. Bledsoe went to the claimant's home to retrieve her keys so he could help close the store. The claimant's roommate, Mr. O'Rourke, gave them to him. The claimant went back to the store around 9:15-9:30 p.m. to try and close the store but it was already closed.

The next day, April 1, 2019, the claimant called the employer around 10:00 a.m. and spoke to shift leader, Chad. She informed him she was still sick and going to the doctor. On April 3, 2019, the claimant dropped off a doctor's note at the central store, which was the closest store to her home, (although not the location she worked at) and one of the two stores managed by Ms. Helbing. She left the note with assistant manager, Sherry. Ms. Helbing stated she tried to contact the claimant on April 2, 3, and 4, but left no messages. On April 5, 2019, the claimant called payroll when her check was not direct deposited as anticipated. She learned at that time that her check would be in paper form and withheld until she returned her employer keys and uniform. It was at that time the claimant learned she had separated from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit the employment but was discharged for no disqualifying reason. Benefits are allowed, provided she meets all other requirements.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id*.

A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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, the claimant did not have the option of remaining employed nor did she express intent to terminate the employment relationship.

Rather, the claimant made attempts to notify her manager and secure coverage for her shift when she fell too ill to continue working. She followed up the next day by properly reporting her absence to the shift leader, and then two days later, dropped off a doctor's note to the employer to cover her absences. Had the claimant intended to quit the employment when she left early on March 31, 2019, she would not have continued to be in contact with the employer for her next shifts. Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Thus, the issue to address is whether the claimant was discharged for disqualifying job related misconduct.

Iowa Administrative Code rule 871-24.32(1)a provides:

> "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).

In an at-will employment environment, 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, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Here, the claimant left her shift without management coverage on March 31, 2019. She made reasonable attempts to notify her manager to obtain shift coverage. She attempted to go back to the store and close it but learned the other employees had closed early due to frustration. The claimant followed up with the employer the next day by properly reporting her absence which was due to continued illness. The claimant had no prior warnings during her four and a half years of employment.

The administrative law judge does not condone the claimant leaving the store without a manager on duty to supervise. In the case of a potentially infectious illness however, it would seem reasonable that an employer would not want an employee to be at work, especially in food service, if they are at risk of infecting other employees or customers. Based on the evidence presented, the administrative law judge concludes the conduct for which the claimant was discharged was an isolated incident of poor judgment and inasmuch as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. 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. Training or general notice to staff about a policy is not considered a disciplinary warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer has not met its burden of proof to establish a final act of misconduct, and, without such, the administrative law judge concludes the claimant's separation is not disqualifying. The claimant is allowed benefits, provided she is otherwise eligible.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law.

DECISION:

The April 26, 2019, (reference 02) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn