

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CYNTHIA JAMES
Claimant

APPEAL NO. 14A-UI-05252-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAREAGE OF NEWTON LLC
Employer

OC: 04/20/14
Claimant: Appellant (2)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Cynthia James (claimant) appealed an unemployment insurance decision dated May 15, 2014, (reference 02), which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Careage of Newton, LLC (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 10, 2014. The claimant participated in the hearing. The employer participated through Administrator Eric Olson.

ISSUE:

The issue is whether the claimant's separation from employment qualifies her to receive unemployment insurance benefits.

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 full time as a certified nurse's aide from March 21, 2012, through January 20, 2014, when she quit in lieu of discharge. She was a hard worker and one of the few employees who was willing to work double shifts, which meant 16 hours of straight duty. The claimant frequently worked double shifts because she needed the money and had difficulty refusing the employer's requests.

The claimant received a warning on August 6, 2013, for sleeping on the job. She had been working a double shift and happened to nod off but someone saw her and reported it. The claimant did not go into a private room to take a nap but fell asleep because she was exhausted. The Administrator said sleeping is a terminable offense but the claimant received a final warning instead.

The claimant worked double shifts on both January 18, 2014, and January 19, 2014. She got off work at 6:00 a.m. on January 20, 2014 and went home to bed. The claimant received a call from the Administrator at 2:00 p.m. that day saying he wanted her to come in to talk to him. She was sleeping and scheduled to work that night so asked if she could come in later. The

claimant went to the nursing home at approximately 4:00 p.m. and the Administrator was not in his office. She asked where he was and walked around looking for him. At the nurse's station, the claimant saw that her name had been marked off the schedule. She knew she was going to be fired so she went to retrieve her personal belongings and went back to his office. The Administrator said he was going to have to let the claimant go, she said okay and left the building because she was going to cry.

The Administrator was going to discharge the claimant but contends she quit before that happened. The claimant did not know why she was being fired but was not going to beg for her job and saw no point in filling out any paperwork for the employer to fire her. The Administrator was going to discharge the claimant because he had received reports that she was sleeping while working on the night of January 18, 2014, at 9:00 p.m. and at 2:00 a.m. The claimant denied these allegations and said she was putting residents to bed at 9:00 p.m. The employer did not provide any written reports or first-hand witnesses for the hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined 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. Iowa Code § 96.5-1.

The claimant quit on January 20, 2014, because she was going to be fired. She really did not intend to quit but just opted to leave when she learned she was going to be fired so that the employer did not see her cry. When an employee quits in lieu of discharge, it is an involuntary quit since the employee really had no choice in the matter. However, the rule specifically treats this type of a separation as a voluntary quit with good cause attributable to the employer. 871 IAC 24.26(21).

In a voluntary quit situation, it is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has satisfied that burden and benefits are allowed.

However, it should be noted that the outcome would be the same if the case were analyzed as a discharge. The employer has the burden to prove the discharged employee is disqualified for benefits for work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). 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. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant was going to be discharged because she nodded off while working double shifts and she had previously received a warning about this. 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.* In the case herein, there is no wrongful intent. If the claimant nodded off on May 18, 2014, it was because she was exhausted after working too many hours on too many occasions. However, the hearsay evidence that she fell asleep is not more

credible than the claimant's denial of the same. Consequently, work-related misconduct has not been established.

DECISION:

The unemployment insurance decision dated May 15, 2014, (reference 02), is reversed. The claimant's separation is non-disqualifying and benefits are allowed, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css