

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCHULDT SCHULDT
Claimant

OELWEIN COMMUNITY SCHOOL DISTRICT
Employer

APPEAL 21A-UI-03809-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer/appellant, Oelwein Community School District, filed an appeal from the January 22, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that granted benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 31, 2021. The claimant did not participate. The employer participated through Business Manager Michael Rueber and Superintendent Josh Ehn. The administrative law judge took official notice of the administrative records.

ISSUES:

1. Was the claimant discharged for disqualifying job-related misconduct?
2. Whether the claimant was overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Jennifer Ann Schuldt,¹ was employed for various terms of employment at the employer, Oelwein Community School District. She was employed the most recent term, full-time as a paraeducator from March 6, 2014, until this employment ended on December 17, 2020, when she was terminated. Her immediate supervisor was Principal Justin McGuinness. The claimant’s job does not require her to maintain a driver’s license.

The employer has an employee handbook. On page 14, the employer’s employee handbook that states generally that the employer’s public image begins with the conduct of its educator’s behavior outside of work. It stresses teachers are role models for kids and in particular states a teacher’s dress should be tasteful even when they are not at work. It lists various things in which an employee can entangle the school’s image, but does not list any that correlates with the off premises misconduct alleged in this case.

¹ She is listed as Schuldt Schuldt throughout Iowa Workforce Development’s system, but other records referenced below identify her as Jennifer Ann Schuldt.

On October 12, 2020, at 3:05 p.m., Oelwein police officers arrested and charged the claimant with operating while intoxicated first offense and child endangerment after pulling her over at the intersection of East Charles Street and First Avenue in Oelwein, Iowa. She was pulled over about nine tenths of a mile away from the nearest campus operated by the employer, Oelwein High School, which is located at 315 8th Avenue Southeast in Oelwein, Iowa.

On October 15, 2020, the claimant returned to work. The claimant spoke with Mr. Ehn and Mr. Ehn about attending a rehabilitation clinic. At the hearing, Mr. Ehn testified that the employer wanted to give the claimant a second chance after this incident.

On December 4, 2020, Oelwein police officers arrested and charged the claimant with operating her vehicle while her license was revoked. The employer became aware of the incident because the claimant did not report to work that day.

Following her arrest on December 4, 2020, the claimant was placed on administrative leave. During the time she was on administrative leave, Mr. Ehn informed her that he would be recommending her termination to the school board during a public meeting. Mr. Ehn testified educators typically will resign in lieu of the embarrassment of having Mr. Ehn recommend their termination during a public meeting. Mr. Ehn explained that the claimant's behavior was putting quite a bit of negative publicity on the employer.

On December 17, 2020, the claimant submitted her resignation to District Office Manager Karen Cedars, Superintendent Josh Ehn, and Mr. McGuinness.

On December 13, 2020, the claimant reopened her claim for benefits. The claimant's weekly benefit amount is \$271.00. She received a total of \$2397.00 in regular unemployment insurance benefits from the week ending December 19, 2020 to the week ending March 13, 2020. Business Manager Michael Rueber and Office Manager Karen Cedars participated in the fact finding interview. Mr. Rueber sent the claimant's resignation in by facsimile.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant quit in lieu of discharge, and disqualifying, job-related misconduct has not been established. Since the claimant is entitled to benefits, the issue regarding whether she was overpaid benefits is moot.

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 re-qualify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

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.

.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 resigned in lieu of being hailed to a public meeting when her termination would be recommended to the school board. 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).

In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits.

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).

Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be “work-connected.” *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). The court has concluded that some off-duty conduct can have the requisite element of work connection. *Kleidosty v. Emp't Appeal Bd.*, 482 N.W.2d 416, 418 (Iowa 1992). Under similar definitions of misconduct, for an employer to show that the employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence that the employee's conduct (1) had some nexus with the work; (2) resulted in some harm to the employer's interest, and (3) was conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer. See also, *Dray v. Director*, 930 S.W.2d 390 (Ark. Ct. App. 1996); *In re Kotrba*, 418 N.W.2d 313 (SD 1988), (quoting *Nelson v. Dept of Emp't Security*, 655 P.2d 242 (WA 1982)); 76 Am. Jur. 2d, Unemployment Compensation §§ 77–78.

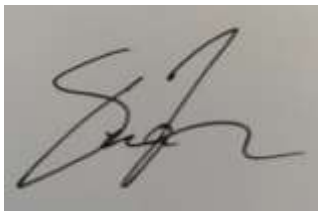
In this case, the claimant's misconduct occurred off of school grounds on December 4, 2020. On that date the claimant was arrested for driving with a revoked driver's license and did not attend work that day. In that context the employer must fulfill all of the elements above to establish her termination disqualifies her from benefits. The employer cannot fulfill any of these elements.

While the employer's witnesses stress there is some kind of connection between her being charged with operating a motor vehicle with a revoked license and her work, there does not appear to be one. The record does not establish the claimant needed to maintain a license to teach at the school.

While the employer's witnesses stressed that the employee handbook stated educators are role models, they conceded that the behavior the claimant was arrested for on December 4, 2020, was not listed as an example.

DECISION:

The unemployment insurance decision dated January 22, 2021; (reference 01) is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



Sean M. Nelson
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April 20, 2021
Decision Dated and Mailed

smn/ol