

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE M GAMBLIN
Claimant

APPEAL 18A-UI-03214-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JB AUTOMOTIVE
Employer

**OC: 01/28/18
Claimant: Respondent (5)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24(10) – Employer participation in Fact-finding Interview
Iowa Admin. Code r. 871-24.26(4) – Intolerable or Detrimental Working Conditions

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the March 1, 2018 (reference 02) unemployment insurance decision that allowed benefits to claimant based upon her separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on March 30, 2018. The claimant, Michelle M. Gamblin, participated personally. The employer, JB Automotive, participated through Manager Jeffrey Beesley. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a secretary and sales person at the employer's used car lot. Claimant's job duties included completing paperwork and selling cars. Claimant was employed from July 10, 2017 until January 29, 2018. Claimant's immediate supervisor was Jeffrey Beesley, who was the manager.

On January 29, 2018, Mr. Beesley approached claimant and began berating and screaming at her regarding her not listing the late fee and repossession fee on paperwork. Mr. Beesley had never instructed claimant to list the late fee and repossession fee on the paperwork. Mr. Beesley had screamed at the claimant on at least two other occasions. Mr. Beesley's screaming was so loud on January 29, 2018, that another employee came to see if everything

was alright. Claimant stated to Mr. Beesley in a calm tone of voice “I don’t mind working here but I don’t like it when you get upset and start hollering.” Mr. Beesley told claimant to leave and go home on two occasions during this verbal altercation. Claimant gave Mr. Beesley the keys and left as instructed. Claimant had no discipline during the course of her employment.

Claimant has received benefits of \$1,736.00 for eight weeks between January 28, 2018 and March 24, 2018. Employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

First, it must be determined whether claimant quit or was discharged from employment. 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). 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); *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Claimant clearly had no intention to quit. Mr. Beesley was the person who told the claimant to go home on two separate occasions. There was not an overt act of carrying out any intention to quit by claimant because she left as she was instructed to do by Mr. Beesley. Claimant’s action in giving the keys to Mr. Beesley is not an overt act of carrying out any intention to quit because she only returned the keys to the employer because she was being discharged from employment. See *Morris v. IBP, Inc.*, No. 00-0703, 2001 WL 539653 (Iowa Ct. App. May 23, 2001).

Because claimant was discharged from employment, the burden of proof falls to the employer to establish that claimant was discharged for job-related 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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” 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, the employer incurs potential liability for unemployment insurance benefits related to that separation.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

In this case, there was no final act of misconduct that the claimant committed which would disqualify her from receiving benefits. The employer did not prove that claimant was in violation of any rule or policy or that she had been instructed to list the late fee and repossession fees on paperwork previously. Benefits are allowed. Because benefits are allowed, the issues of overpayment and chargeability are moot.

Even if claimant was found to have voluntarily quit, she did so with good cause attributable to the employer.

Iowa Admin. Code r. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

Notice of an intent to quit is not required if claimant left due to intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). “Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)(“[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith”); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer “free from fault”); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)(“The good cause attributable to the employer need not be based upon a fault or wrong of such employer.”).

It is reasonable to the average person that claimant should not have to work with someone who is verbally abusive towards her on multiple occasions. This was not the first time that Mr. Beesley had berated and screamed at the claimant. Claimant has proven that her working conditions were intolerable, detrimental and unsafe due to the incident with Mr. Beesley on January 29, 2018. Thus, any voluntary quitting by claimant would have been with good cause attributable to the employer and benefits would be allowed under a voluntary quit analysis as well.

DECISION:

The March 1, 2018 (reference 02) unemployment insurance decision is modified with no change in effect. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The employer’s account may be charged for benefits paid.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs