IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

EDITA RAKOVIC Claimant **LITTLE MIRACLES CHILD DEVELOPMENT** Employer	**APPEAL 20A-UI-08116-NM-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/13/19** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On July 9, 2020, the claimant filed an appeal from the July 7, 2020, (reference 03) unemployment insurance decision that denied benefits based on a determination that she voluntarily left employment. The parties were properly notified about the hearing. A telephone hearing was held on August 24, 2020. Claimant, Edita Rakovic, participated. Employer, Little Miracles Child Development, did not participate. Claimant's Exhibits A and B were received into evidence.

ISSUE:

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 began working for employer in November 2019. Claimant last worked as a full-time daycare provider. Claimant was separated from employment on April 22, 2020, when she was discharged.

When claimant was first hired by the employer, she worked Monday through Friday. However, when the COVID 19 pandemic hit, claimant was dropped down to four days a week, with Wednesdays being her day off. This change took place in early April. Early in the morning, on April 22, 2020, claimant received a text message from one of her managers telling her to report to work by 8:00 a.m. because they needed coverage. This was claimant's scheduled day off and she had not planned on working that day, so she did not have childcare arranged. Claimant explained this to the employer. (Exhibit A). The employer responded stating claimant was told she would be on call. Claimant denied ever being told this information. Later that day, the same manager sent a message to claimant accusing her of being disrespectful and failing to meet classroom requirements. (Exhibit B). The message concluded by stating claimant's last

check would be in the mail. Claimant took this to mean she was discharged from employment. Claimant had no prior disciplinary action or warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not voluntarily 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.

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). Here, there is no evidence suggesting claimant wished to resign employment. Rather, the employer discharged her when it stated her last check would be in the mail.

Iowa Code section 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Here, claimant was discharged from employment when she was unavailable to come in on a day she was not scheduled to work. Claimant was given last minute notice that she was needed at work. Claimant could not work, because she did not have childcare that day. Claimant normally had childcare arrangements, on dates she was given sufficient notice that she was expected to be at work. Claimant had no prior warnings or disciplinary action. 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. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

DECISION:

The July 7, 2020, (reference 03) unemployment insurance decision is reversed. Claimant did not voluntarily quit, but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

August 25, 2020
Decision Dated and Mailed

nm/scn