

appeared on the random testing list, which was sent to the employer in the claimant's name at the beginning of every quarter.

The claimant went on vacation starting July 14, 2005. About a month earlier, the employer had left a note for the claimant stating that she should be added to the pool of employees subject to random drug tests because she occasionally drove the employer's trucks. The claimant complied with this request and had no problem with being in the pool. There also had been some discussion about Greg Elbert, the company president, taking over the DER duties. While the claimant was on vacation, the third-party administrator of the employer's drug testing program contacted her at home and asked whether the employer had received the list of employees to be tested, which had been sent out at the beginning of the month. The claimant called the vice president of the company, Janice Elbert, and asked about the list. Elbert informed the claimant that her husband, Greg Elbert, was going to take over the DER position and the claimant would not be receiving the list.

When the claimant reported to work on July 25, 2005, she informed Janice Elbert that she wanted to be removed from the list as the designated DER because she did not want to be held responsible for that position or have her name used in conducting tests that she had no involvement in. Elbert misunderstood the claimant's point and believed the claimant did not want to be randomly tested, which was not the case. She and the claimant argued over this issue. Elbert told the claimant, "Carmela, you go home, you are done here." Elbert then asked for the claimant to turn in her keys. The claimant reasonably believed based on Elbert's actions and what she had said, that she had been discharged. She turned in her keys and left work as instructed. Although Elbert may have been sending the claimant home for just that day, she did not communicate that to the claimant.

When the claimant did not return to work the next day, Elbert consider the claimant to have quit her job. The parties did not communicate again regarding the claimant's employment status.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I do not believe that the employer communicated to the claimant that she was to come back to work the next day. Based on what Elbert said, the claimant reasonably believed that she was discharged. The separation from employment, therefore, must be treated as a discharge by the employer.

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 claimant had every right to insist that her name be removed as the DER if she was no longer responsible for that position. It is obvious that the disagreement on July 25 stemmed to a large degree on misunderstanding and miscommunication. No willful or substantial misconduct on the part of the claimant has been proven in this case.

DECISION:

The unemployment insurance decision dated August 24, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjf