

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REBECCA TIPTON
Claimant

First Resources Corp.
Employer

**DIA APPEAL NO. 21IWDUI0199
IWD APPEAL NO. 21A-UI-00085**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: September 20, 2020
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant, Rebecca Tipton, filed an appeal from the November 23, 2020 (Ref. 01) unemployment insurance decision that denied benefits based upon a determination that Claimant was ineligible to receive unemployment insurance benefits because she was discharged for a “violation of a known company rule.” A telephone hearing was held on February 11, 2021. Claimant appeared on her own behalf and testified. Employer failed to appear. The entire administrative file, including the decision under review, was admitted into the record, and the matter is now fully submitted.

ISSUE(S):

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

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

Claimant commenced working for Employer in June of 2020 after Employer merged with the company for which she had been working. For all relevant time periods, Claimant was a fulltime direct service care provider assisting those with disabilities. In early September of 2020, Claimant worked an eight hour shift at a group home for Employer. After her shift had finished and another individual relieved her at the home, it was reported that one of the clients was missing money.

Employer placed Claimant and numerous other individuals effectively on leave through cancelling their work shifts while it investigated the matter. On September 11, 2020, Employer conducted a meeting with Claimant and the other individuals on leave in part for the purposes of attempting to learn more information. Thereafter, on September 14, 2020, Employer met with Claimant directly and ended its employment relationship with her. The meeting lasted minutes, and Employer provided no specific reason for the termination beyond Claimant not being a “good fit” for the company.

On September 20, 2020, Claimant filed for unemployment, and in a November 23, 2020, decision, the Department denied benefits finding she was discharged for violation of a known company rule. Claimant appealed, and at the hearing, she testified she did not take any money and she is not sure why Employer ended her position.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.
2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

The employer has the burden of proving that a claimant's departure from employment was voluntary. Irving v. Emp't Appeal Bd., 883 N.W.2d 179, 209 (Iowa 2016). "In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." Id. at 207 (citing Cook v. Iowa Dep't of Job Serv., 299 N.W.2d 698, 701 (Iowa 1980)).

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), (2)(a). 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 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); Peck v. Emp't Appeal Bd., 492 N.W.2d 438 (Iowa App. 1992).

By contrast, discharge for misconduct means:

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.

Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979) (citing the then version of Iowa Admin. Code r. 871-24.32(1)). 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). 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." Newman v. Iowa Dep't of Job Serv., 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Id. Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731 (Iowa Ct. App. 1986).

In this case, no dispute exists Employer discharged Claimant from work on September 14, 2020. Claimant did not quit. As such, Employer bears the burden of providing misconduct, which it has not done because the record is devoid of evidence indicating the reason for the discharge or any conduct that could give rise to qualifying misconduct. There was an investigation for some missing money, but there is no proof Claimant took the money. Accordingly, the Department's decision must be REVERSED.

DECISION:

The November 23, 2020 (Ref 01) unemployment insurance decision is REVERSED. Claimant is eligible to receive benefits. Any benefits claimed and withheld on this basis shall be paid.



Jonathan M. Gallagher
Administrative Law Judge

2/12/21

Decision Dated and Mailed

LEL/lb

Cc: Rebecca Tipton, Claimant (By mail)
First Resources Corp., Employer (By mail)
Nicole Merrill, IWD (By email)
Joni Benson, IWD (By email)