

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**ALEXANDRA FISCHLEIN**  
Claimant

**APPEAL 18A-UI-10344-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHRISTIA NACHE INSURANCE**  
Employer

**OC: 09/23/18  
Claimant: Respondent (1)**

---

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the October 12, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 30, 2018. Claimant participated and testified. Employer participated through owner Christia Nache. Employer's Exhibits 1 through 4 were admitted into evidence.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

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 began working for employer on July 9, 2018. Claimant last worked as a full-time office manager. Claimant was separated from employment on September 20, 2018, when she was discharged.

At the time claimant was hired she was advised by Nache that she would need to get her insurance license within 30 days. The employer purchased study materials for Nache, but she did not receive them until close to the end of her first 30 days of employment, so she was given additional time to take the test and get licensed. By September 10, 2018, claimant still had not taken the insurance licensing exam. Claimant was then put on a personal improvement plan and given until September 24, 2018 to get licensed. (Exhibit 4). Claimant was experiencing an

extreme amount of anxiety about taking the exam and approached Nache to discuss her concerns. The two agreed claimant would be given a final date of October 5, 2018 to take and pass the exam.

Several days after this conversation, on September 20, Nache heard claimant was talking to another employee about concerns with passing the exam and about possibly getting another job. Nache met with claimant to discuss her concerns. During the conversation claimant admitted her anxiety was getting the best of her. Nache testified claimant indicated her heart was not in the work and that taking the exam was too much for her. According to Nache, she took this to mean claimant was resigning. Claimant testified, she did express concerns about the test, but made it clear to Nache it was not her intent to resign. Specifically, claimant testified she told Nache she could not leave her job without another job lined up and asked if there was other work she could do around the office, though she was still willing to try to take and pass the exam by the October 5 deadline.

At the end of the conversation Nache told claimant she would be paid for the remainder of the week and her next two weeks and that she could come pick up her belongings at her convenience. Claimant took this to mean she was being discharged from employment. Nache testified it was not her intention to discharge claimant at that point in time and she thought the two were going to touch base regarding the status of claimant's employment the following week.

The claimant filed a new claim for unemployment insurance benefits with an effective date of October 12, 2018. The claimant filed for and received a total of \$1,002.00 in unemployment insurance benefits for the weeks between October 7 and October 27, 2018. Both the employer and the claimant participated in a fact finding interview regarding the separation on October 11, 2018. The fact finder determined claimant qualified for benefits.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

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).

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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Here, the employer initiated the communication with claimant on September 20, 2018 to discuss concerns regarding claimant's insurance exam. Because there was unclear communication between claimant and employer about the interpretation of both parties' statements about the status of the employment relationship; the issue must be resolved by an examination of witness credibility and burden of proof. Claimant left the conversation thinking she had been discharged, while the employer believed she had quit. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and

knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events. Since most members of management are considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee, it is reasonably implied that the ability to communicate clearly is extended to discussions about employment status. Claimant established a desire to continue working by asking to remain employed until she could find other work. Claimant's interpretation of the conversation as a discharge was reasonable, as employers generally do not make arrangements for the removal of an employee's belongings unless they are being separated from employment. Accordingly, the burden of proof falls to the employer.

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.

Iowa Admin. Code r. 871-24.32(5) provides:

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

Discharge within a probationary period, without more, is not disqualifying. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

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.

Here, the claimant was discharged after the employer became concerned she was looking for other work and she would not be able to pass the insurance licensing exam by an October 5 deadline. The deadline for completing the exam had been extended several times, but the final deadline given was October 5 and that deadline had not yet arrived at the time claimant was separated from employment. Since claimant was discharged from employment before being given an opportunity to meet the employer's expectations prior to the October 5 deadline, no intentional misconduct has been established, as is the employer's burden of proof. Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed. As benefits are allowed, the issues of overpayment and participation are moot.

**DECISION:**

The October 12, 2018, (reference 01) decision is affirmed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits withheld shall be paid to claimant. The issues of overpayment and participation are moot.

---

Nicole Merrill  
Administrative Law Judge

---

Decision Dated and Mailed

nm/rvs