IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MARIA ZEPHANIA M FERNANDEZ Claimant **WAVERLY HEALTH CENTER** Employer	**APPEAL 17A-UI-03691-SC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/12/17** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Maria Zephania M. Fernandez (claimant) filed an appeal from the March 27, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit her employment due to a personality conflict with her supervisor which is not a good cause reason attributable to Waverly Health Center (employer). The parties were properly notified about the hearing. A telephone hearing was held on April 28, 2017. The claimant participated and was represented by Attorney Laura L. Folkerts. The employer did not respond to the hearing notice and did not participate. No exhibits were offered or received into the record.

ISSUE:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the 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: The claimant was employed full-time as a House Supervisor beginning on November 16, 2015, and was separated from employment on February 16, 2017. The claimant was originally hired to work Monday through Friday 4:00 p.m. to midnight. In September 2016, she agreed to temporarily work Monday through Friday 11:00 a.m. to 7:30 p.m. She was told at that time when she was placed back on a permanent shift, it would be a third shift position working Sunday through Thursday from midnight to 8:30 a.m.

On February 2, 2017, Chief Clinical and Nursing Officer Joanne Mathem asked the claimant to work Monday and Tuesday from 4:00 p.m. to midnight and Wednesday through Friday from midnight to 8:30 a.m. beginning February 13, 2017. The claimant told Mathem she would need time to check her personal schedule to see if the hours would work. Mathem told her that was fine, but if she did not work the hours there would be consequences.

The claimant reported her conversation with Mathem to Employee Relations Specialist Abby Miller. Miller and the claimant had some conversations about her hours. The claimant agreed to work the hours the week of February 13, 2017, but still wanted to discuss the issue. On February 15, 2017, Miller asked the claimant if she was resigning her position. The claimant said she was not and stated she wanted to continue working for the employer. The following day she met with Miller and Mathem. She was told at that time it was in the employer's best interest for her employment to end.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not voluntarily quit her employment but was discharged no disqualifying reason. Benefits are allowed.

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) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left her employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). 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 Ct. App. 1992). An employee who was given the option of resigning or being discharged is not considered to have voluntarily left his or her employment. Iowa Admin. Code r. 871-24.26(21). Where there is no voluntary choice to remain employed, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

The claimant was given the option of resigning or being discharged. She did not have the option to remain employed. Therefore, the case will be analyzed as a discharge.

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. 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). Iowa regulations define misconduct, stating:

> "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.

Iowa Admin. Code r. 871-24.32(1)a. 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).

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."

The employer has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. It has not given a reason for the claimant's discharge or presented a policy that the claimant's conduct violated. The claimant had not received any prior warnings and did not know her job was in jeopardy. Accordingly, benefits are allowed.

DECISION:

The March 27, 2017, reference 01, unemployment insurance decision is reversed. The claimant 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.

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Stephanie R. Callahan
Administrative Law Judge

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Decision Dated and Mailed

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