

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARA LOCKNER
Claimant

APPEAL 21A-UI-11833-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CENTRAL IOWA HOSPITAL
CORPORATION**
Employer

**OC: 03/07/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 16, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on July 13, 2021. Claimant Sara Lockner participated and testified and was represented by attorney Harley Erbe. Employer Central Iowa Hospital Corp participated through vice president of behavioral health Kevin Carroll and human resources business partner Mitchell Spivey. Claimant's Exhibits A – F were received.

ISSUE:

Did claimant voluntarily leave the employment without good cause attributable to the 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 was employed part-time as a psychiatric nurse practitioner from January 2013 until March 13, 2021, when she separated from her employment.

In March 2020, claimant's position became a contract position. On March 12, 2020, claimant and employer signed an employment agreement. (Exhibit A). The term of the agreement began on or about April 1, 2020 and was set to terminate March 31, 2021; however, the agreement would automatically renew for successive periods of one year each unless either party gave the other party 60 days' notice prior to the termination of the agreement. The agreement contained provision 16b which provided that notice must be in writing. The agreement also contained provision 19e which required "all notices required or permitted under this Agreement shall be in writing and shall be sent by certified mail, return receipt requested."

In October 2020, employer notified claimant that due to transitioning practitioners from the hospital to its clinics, that it would draft a new contract. Claimant received the new contract for

review in December 2020. The new contract contained several new provisions. Under the new contract claimant would be expected to work on call shifts, some of which were without compensation, and some of her duties would change. The new contract also contained a non-compete clause. (Exhibit B). Claimant and employer entered into discussions regarding the new provision, which claimant was not comfortable signing, and she asked to negotiate the terms of the new contract. (Exhibit C, D). Employer declined. Claimant did not sign the new contract.

On January 13, 2021, employer sent a notice of termination of the agreement to claimant by email. The notice stated the agreement was terminated in 60 days, effective March 13, 2021. The notice was not sent by certified mail, return receipt requested. Claimant's last day of employment was February 11, 2021.

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. Benefits are allowed.

Iowa Code section 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

The claimant's separation from work was not voluntary because she had no intention of quitting. The notice to terminate the contract was not sent by certified mail, meaning the current contract remained in effect. Claimant would have continued working under the current contract had she been allowed to do so, but employer ended her employment. Thus, the separation must be analyzed as a discharge.

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.

No evidence was presented that claimant received any warnings about her conduct or that she knew her job was in jeopardy. There is no evidence showing an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Employer has not met its burden of proving disqualifying job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

In the alternative, even if the claimant had voluntarily quit her employment, benefits would still be allowed.

Iowa Admin. Code r. 871-24.26(1) provides:

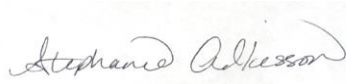
Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Employer changed claimant's contract by adding on call hours, modifying some of claimant's job duties, and adding a non-compete clause. These are not minor changes, but are substantial in nature.

DECISION:

The April 16, 2021, (reference 01) unemployment insurance decision is reversed. 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.



Stephanie Adkisson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

July 26, 2021
Decision Dated and Mailed

sa/mh