

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KARLA BOND
Claimant

APPEAL 14A-UI-12510-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEVELOPMENTAL SERVICES OF IOWA
Employer

**OC: 11/09/14
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 25, 2014 (reference 01) unemployment insurance decision that denied benefits based upon the claimant voluntarily quit without good cause. The parties were properly notified about the hearing. A telephone hearing was held on December 30, 2014. The claimant participated. The employer, Developmental Services of Iowa, participated through Angie Weis, Area Director.

ISSUE:

Did the claimant quit the employment without good cause attributable to the employer or was she discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment 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 Human Resources manager and was separated from employment on November 11, 2014, when she resigned in lieu of termination.

As the human resources manager, part of the claimant's job responsibilities included running background checks on all employees. Checks involved a four-step process by obtaining details about an individual's criminal and driving history, as well as visiting two other websites for information. The employer expected the claimant to run background checks prior to an employee's date of hire, six months after hire, and then annually.

In May 2014, the employer met with the claimant regarding an assessment and also discussed her being behind on job responsibilities. No formal discipline was initiated and background checks were not specifically discussed. Between May and November 2014, the claimant notified her employer on two occasions that she was overwhelmed and behind on her responsibilities. The employer offered assistance by having a case manager screen applications for hiring a new nurse and was looking into options regarding reducing the claimant's payee responsibilities.

Formatted: Font color: Auto

Formatted: Justified

Formatted: Line spacing: single

Formatted: Font color: Auto

Comment [DL1]: Check if caps needed here

Formatted: Font: 11 pt, Font color: Auto

Formatted: Font color: Auto

Comment [DL2]: Remind me to check your caption for justify right and left formatting issues

Comment [DL3]: Check hyphenation

Formatted: Font: 11 pt, Font color: Auto

Formatted: Font color: Auto

Formatted: Font: 11 pt, Font color: Auto

Formatted: Font color: Auto

Due to the high turnover and being the only human resources manager on site, the claimant fell behind on some of her six month and annual background checks.

About a month prior to separation, Ms. Weis ~~received~~ was notified the claimant had failed to complete a background check while assisting a sister agency. The claimant was not warned for the instance, but Ms. Weis contacted Lorie Scherling in corporate human resources and recommended an internal audit for the location for compliance. Ms. Scherling visited the location on November 10 and 11, and performed an audit. The employer testified the audit revealed the claimant was non-compliant on her background checks. When confronted with the results, the claimant apologized. She was subsequently offered the option to resign in lieu of termination.

Comment [DL4]: Forced space between title and name – Shift Control space bar all at once
Formatted: Font: 11 pt, Font color: Auto
Formatted: Font color: Auto

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged from employment for no disqualifying reason.

~~1~~ Ref. Iowa Code § 96.5-1 provides:

Formatted: Font color: Auto
Formatted: Font color: Auto

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.

~~4~~ Iowa Admin. Code r. 871-24.26(21) provides:

Formatted: Font color: Auto

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:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

~~108~~ 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.

~~44~~ Iowa Admin. Code r. 871-24.32(1)a provides:

Formatted: Font color: Auto
Formatted: Justified
Formatted: Tab stops: 0.38", Left + 0.75", Left + 1.5", Left + 2", Left + 2.5", Left + 3", Left + 3.5", Left + 4", Left + 4.5", Left + 5", Left + 5.5", Left + 6", Left + 6.5", Left + 7", Left + 7.5", Left + 8", Left + 8.5", Left

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).

45

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Casper 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."

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a direct order. *Sallis v. EAB*, 437 N.W.2d 895 (Iowa 1989). Ms. Bond was not in compliance with her background checks at the time of separation. The employer never warned the claimant her job was in jeopardy for failure to complete her background checks. The claimant had, on more than one occasion, notified the employer that she was behind on her responsibilities and the employer knew the claimant was overwhelmed. The claimant's conduct did not demonstrate any wrongful intent or willful failure to not complete the background checks. The employer has not met the burden of proof to establish that claimant engaged in misconduct. Benefits are allowed.

Formatted: Font color: Auto

Formatted: Justified

Formatted: Line spacing: single

Formatted: Line spacing: single, Don't adjust space between Latin and Asian text

Comment [DL5]: Forced space here in case name

Formatted: Font: 11 pt, Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Line spacing: single

DECISION:

The November 25, 2014, (reference 01) decision is reversed. The claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld shall be paid to claimant.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/ /pis

Formatted: Justified

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Line spacing: single