

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHER L NEDER
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 18A-UI-09703-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/19/18
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
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 September 11, 2018 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant did not quit but was discharged from employment for no disqualifying reason. The parties were properly notified of the hearing. A telephonic hearing was held on October 5, 2018. The claimant, Heather Neder, participated. The employer, Casey's Marketing Company, participated through Tim Luse, Store Manager; and Zontel McCann, Lead UIC. Claimant's Exhibits A, B, and C and Employer's Exhibits 1 through 4 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

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 unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can 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 was employed full-time, most recently as a kitchen manager, from February 4, 2015, until August 21, 2018, when she was discharged. Claimant came to work on August 21 as scheduled. When she walked in, the kitchen was in considerable disarray. Claimant started having an anxiety attack. At 9:37 a.m., she called Luse and notified him that the kitchen was in the worst shape it had ever been in and she was frightened. Luse told her that the store was short-handed and she needed to get to work. Claimant got off the phone and told her co-worker that she was having an anxiety attack and needed to leave. Claimant offered to come in the following morning at 3:00 a.m. to help train this co-worker for an hour on donut-making. Claimant also notified the assistant manager that she was having an anxiety attack and needed to leave work. At 9:46 a.m., claimant texted Luse to notify him that she was having an anxiety

attack due to the state of the kitchen, detailing the issues she had that morning. (Exhibit C) Claimant notified Luse that she left work due to the anxiety attack.

Claimant came in the following morning to train her co-worker on donut-making, but the co-worker did not report to work. Claimant worked until the co-worker arrived. She then checked the schedule to see who she would be working with later that day. At that point, claimant noticed that her name had been removed from the schedule. Claimant went home and waited until 7:00 a.m. to contact Luse's manager to inquire about the schedule. After some back and forth, Luse's manager told claimant to report to work. When claimant arrived at work, she spoke with Luse. Luse told claimant that she had quit by leaving her shift the day before.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,162.00, since filing a claim with an effective date of August 19, 2018, for the six weeks ending September 29, 2018. The administrative record also establishes that the employer did participate in the fact-finding interview or make a first-hand witness available for rebuttal. Zontel McCann participated in the fact-finding interview. The employer also sent in documentation for the fact-finding interview.

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. Benefits are allowed.

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 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 the employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 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). It 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 there is no expressed intention or act to sever the relationship, 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).

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).

In this case, claimant left in the middle of her shift because she began experiencing an anxiety attack. Claimant made reasonable efforts to let Luse and other management know that she was leaving for medical reasons. Claimant did not tell anyone she was quitting and did not abandon her job entirely. The employer has not presented any evidence that claimant intended to quit. Rather, the evidence shows claimant took steps to let management know she was leaving for medical reasons and intended to return to her job. Therefore, this case will be analyzed as a discharge from employment. The employer bears the burden of establishing disqualifying, job-related misconduct.

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).

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."

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, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's testimony credible. The administrative law judge believes that claimant did not notify Luse when she spoke to him on the phone that she needed to leave due to an anxiety attack. Rather, the administrative law judge believes that claimant told Luse via text message immediately after clocking out that she had to leave because of her anxiety attack.

Here, claimant was discharged from employment after leaving her shift early on August 21, 2018. Claimant had never been warned for leaving early without permission in the past. Before leaving, claimant told Luse and an assistant manager that she needed to leave because she was experiencing an anxiety attack. Claimant also notified her co-worker that she was leaving. While claimant did not notify Luse prior to leaving that she was having an anxiety attack and needed to leave work, she took steps to notify management at the restaurant that she was leaving and she notified Luse immediately after clocking out that she left due to an anxiety attack. As claimant had never been warned for any similar conduct in the past and took reasonable efforts to notify the employer of her medical reasons for leaving, the employer has not established that claimant was discharged from employment for any disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. As claimant's separation from employment is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The September 11, 2018 (reference 01) unemployment insurance decision is affirmed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn