

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**MARIA BROCKARDT**  
Claimant

**APPEAL NO. 13A-UI-13058-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EYM KING OF IOWA LLC**  
Employer

**OC: 10/27/13**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 15, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 16, 2013. The claimant did participate. The employer did participate through (representative) Javier Barossa, Human Resources Director, Patricia Mendoza, Payroll Administrator and Salvador Elias, Attorney observed the end of the hearing.

**ISSUE:**

Did the claimant voluntarily quit her employment without good cause attributable to the employer or was she discharged due to job connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a restaurant general manager full-time beginning July 2004 through October 28, 2013 when she voluntary quit in lieu of being discharged.

The claimant was initially hired to be the associate general manager at a store on Delaware in Ankeny, Iowa. When she was promoted to a general manager position, she was transferred to the Burger King location on 1st Avenue in Ankeny, Iowa. She worked only for a few weeks at another location on Euclid in Des Moines, Iowa.

The claimant was an excellent manager and because she was so good at her job the employer wanted to transfer her to the Burger King in West Des Moines on Vista Avenue because the store was struggling and needed a manager with the claimant's skill set. The claimant told her regional manager Jeff Fournier, that she did not want to take the transfer because she had small children and needed to be able to respond to any emergency involving them within fifteen minutes.

The claimant drove to the new location; it was twenty-five miles one-way from her home to the new work location. It took her longer than thirty-five minutes to make the commute. She told

Mr. Fournier that she did not want to accept the transfer due to the distance. She was specifically told by Mr. Fournier that if she would not accept the transfer then she should just quit the job. The claimant told him that she did not want to quit, but due to her children she just could not accept the transfer to a store so far from her home. She then met with both Mr. Fournier and Ms. Sobiezkoda, Mr. Fournier's boss, and told them both that she did not want to quit but she could not accept a transfer to the West Des Moines store due to the commuting distance. The claimant offered to transfer to a store closer to her home to help them make personnel changes, but she was again told that she either had to accept the transfer or quit.

The only person who was a party to that conversation, who also testified at the hearing, was the claimant. At hearing the employer made clear that the policy is that no employee is required to accept a transfer. The claimant was coerced into quitting by Mr. Fournier and Ms. Sobiezkoda who inaccurately informed her that she was required to resign since she had not accepted the transfer.

### **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 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.

871 IAC 24.26(21) 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:

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

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.

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 clearly did not want to end her employment, she only submitted the resignation because she was coerced into it by Mr. Fournier when he inaccurately told he she was obligated to resign if she would not accept the transfer. Under these circumstances the separation is best characterized as a discharge, not a voluntary quit.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. The claimant was an exemplary employee. She was not separated from her employment due to job-connected misconduct. The employer has not met their burden of proof to establish that claimant engaged in misconduct. Benefits are allowed.

**DECISION:**

The November 15, 2013, (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs