

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SARAH RODRIGUES

Claimant

APPEAL 21A-UI-00377-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEWTON HEALTH CARE CENTER LLC

Employer

OC: 08/30/20

Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code 871-24.26(4) – Intolerable Work Conditions
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 25, 2020, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 2, 2021. The claimant participated. Employer did not participate. Claimant testified. Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Claimant was employed full time as a dietary manager by the employer, Newton Health Care Clinic LLC, from August 19, 2020, until this employment ended on September 13, 2020, when she was terminated. The claimant's immediate supervisor was Administrator of Nursing Home Sharon Despain.

On August 4, 2020, the employer had a staff meeting in a very small room. Several staff including the claimant suggested that it would be impossible to socially distance in that room and meetings should occur in the dining area. The claimant also brought up several over Covid19 related concerns she thought the employer should address related to use of utensils, cleaning laundry, distributing medical grade masks, and segregating Covid19 contaminated materials from food prep areas.

In early August 2020, the claimant's Covid19 related concerns became exacerbated as the employer's facility was without power in the wake of the large windstorm. The claimant's ability to clean utensils without power was severely impacted during an internal pandemic within the facility.

On August 24, 2020, the claimant made the same complaint to the employer's corporate office by speaking with Regional Clinical Director Lori (last name unknown.) The upshot of this conversation was that the claimant's complaints were reasonable, but she needed to bring them back to Ms. Despain.

On September 13, 2020, the claimant met with Ms. Despain again to go over her concerns regarding the employer's response to Covid19. During the meeting, Ms. Despain brushed away the claimant's concerns and suggestions for the employer's response to improve by suggesting she resign. Eventually, the claimant said that if she was not going to be taken seriously, then maybe she would have to put in a 30 day notice. In response, Ms. Despain said the claimant would be terminated effective immediately.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the employer has failed to meet the standard for disqualifying misconduct.

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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

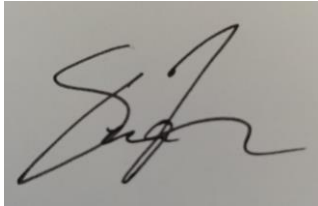
In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The claimant did not quit in this case. She merely made a measured response to defensive baiting on the part of Ms. Despain. That measured response was merely openly considering the prospect of quitting if the employer did not take some corrective action. Ms. Despain's immediate declaration of the claimant's termination preceded and superseded any action the claimant could take to sever the employment relationship in escalation from this ambiguous stance.

Since the claimant was discharged. The employer has to show that it discharged her for willful misconduct. No such showing can be made here. The claimant reported serious health concerns to several levels of management. She did it in a way that was not disruptive or publically embarrassing to the employer. Such action cannot be misconduct. Benefits are granted.

DECISION:

The decision of the representative dated November 25, 2020, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'S. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

February 23, 2021
Decision Dated and Mailed

smn/mh