IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 06A-UI-00280-DT
OC: 12/04/05 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Med-Staff, Inc. (employer) appealed a representative's December 29, 2005 decision (reference 01) that concluded Carol Moore (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 25, 2006. The claimant participated in the hearing, was represented by Breanne Schadt, attorney at law, and presented testimony from one other witness, Tina Klauer. Mike McCarthy, attorney at law, appeared on the employer's behalf and presented testimony from two witnesses, Elizabeth Halsey and Jeff Halsey. During the hearing, Claimant's Exhibits One and Two were entered into evidence. Based on the

evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer part-time as a receptionist in the employer's temporary medical staffing firm on February 20, 2004. She worked full time as of approximately May 2005. At about that time her job duties also changed to marketing at the pay rate of $9.00 an hour; she had a pay increase to $10.00 an hour in approximately August 2005. Her last day of work was December 5, 2005.

In mid-October 2005, the claimant was visiting with a coworker about concerns she had regarding how she felt Ms. Halsey, owner and president, was starting to frequently reprimand her for reasons she did not understand. She commented that she had not thought that Ms. Halsey was prejudiced, but that maybe she was. The coworker relayed the claimant's statement to Ms. Halsey in the context of hoping Ms. Halsey would be less critical of the claimant, but Ms. Halsey in essence suspended the claimant until she agreed to sign a reprimand on October 24, 2005 saying she did not believe Ms. Halsey was prejudiced.

About two weeks later, on November 7, 2005, Ms. Halsey approached the claimant and gave her additional reprimands, one of which indicated that she was being demoted to the receptionist position and back to the pay rate of $8.00 per hour. The claimant responded that she could not afford to work for $8.00 an hour and asked Ms. Halsey to leave her pay rate at $10.00 per hour and she would do her best to "get out of your hair, perhaps in a couple weeks." Ms. Halsey did not make a direct response, and did not inquire of the claimant what she meant or if she was quitting, when her last day of work would be. However, she did not put through any instructions to change the claimant's pay rate. The claimant in essence hoped the incident would blow over and continued reporting for work daily with no further discussion until December 2, 2005; she performed most of her prior job duties, although she no longer did any field marketing after November 7.

On November 29, 2005, the three in-office employees including the claimant sent Ms. Halsey a letter asking her to provide more hands-on assistance or input or in the alternative to give the office staff greater discretion. (Claimant's Exhibit Two.) At the end of the day on December 2, Ms. Halsey confronted the claimant and angrily told her, "you should never have signed that letter." She then told the claimant that beginning Monday (December 5) her pay rate would be the $8.00 per hour, and directed the claimant to turn in her company credit card and keys, which the claimant did.

On December 5 the claimant was at work at about 8:00 a.m. and answered the phone when Mr. Halsey called in. He told her that the other two office employees had indicated that the claimant was "worthless." He asked her to transfer him to another employee, which she did. Ms. Klauer, the then-business manager, was near the claimant's desk when the call came in. She saw the claimant was upset and the two went to the break area to talk. When the claimant relayed what Mr. Halsey had said, Ms. Klauer repudiated the statement.

At that point, Ms. Halsey, who had been in the office unbeknownst to the employees and had been eavesdropping, stepped forward. She had the claimant return to her desk and proceeded to give the claimant three write-ups. The first was for failing to turn over her company cell phone on December 2, although the claimant disputed that she was even asked for the cell phone on that day. The second was for failing to properly complete a client survey, which the claimant felt she had done to the best of her ability. The third was a statement that the employer was accepting her resignation purportedly offered on November 7.

When the claimant saw the third documentation, she refused to sign and denied wishing to resign. She asked Ms. Halsey if she would be fired if she refused to sign the document. Ms. Halsey did not initially respond, but when the claimant asked again, Ms. Halsey replied yes, and told the claimant to get her things and get out. The claimant gathered her belongings and left.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant voluntarily quit.

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 24.25 provides that, 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 from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The employer asserted that the claimant was not discharged but that she quit by offering a two-week notice of quitting in exchange for leaving the wage at $10.00. The administrative law judge finds that the testimony of the claimant is considerably more credible than that of Ms. Halsey, whose testimony of key points was repeatedly inconsistent.

While the claimant did make a comment to Ms. Halsey about “getting out of your hair, perhaps in a couple weeks,” there was no definitive acceptance by the employer and no final date was set so as to remove any ambiguity as to the intentions of either party. The claimant continued to work well after two weeks with nothing further said. At the least, the claimant tacitly rescinded her resignation and the employer tacitly allowed her to rescind. Ultimately, the claimant was told she could either quit or be discharged. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant’s employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679

(Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code Section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
   a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
   b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
   a. Manifest equal culpability, wrongful intent or evil design; or
   b. Show an intentional and substantial disregard of:
      1. The employer's interest, or
      2. The employee's duties and obligations to the employer.

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 reason the employer effectively discharged the claimant was her signing on to the letter of November 29, 2005 and her refusal to sign the statement on December 5, 2005 saying she had quit. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

In the alternative, treating the separation either as a voluntary quit or an announced quit followed by a discharge before the effective date of the quit, the result is the same. The issue then is whether the claimant voluntarily quit for good cause attributable to the employer.

871 IAC 24.26(1), (4) provide:

> 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.
>
> (4) The claimant left due to intolerable or detrimental working conditions.

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). A "contract of hire" is merely the current terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a "contract of hire" to exist, nor is it pertinent that the claimant remained an "at will" employee. The reduction in the claimant's wage which was being implemented was a substantial change in the claimant's contract of hire. Dehmel, supra. Further, the claimant has demonstrated that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. EAB, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973).
Benefits are allowed.

DECISION:

The representative's December 29, 2005 decision (reference 01) is affirmed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/kjf