IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

KERI A GREENE Claimant **HY VEE INC** Employer	**APPEAL 21A-UI-14066-LJ-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/21/21** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit from Employment
Iowa Code § 96.5(2)a – Discharge from Employment

STATEMENT OF THE CASE:

On June 14, 2021, claimant Keri A. Greene filed an appeal from the June 8, 2021 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant voluntarily quit her employment with Hy-Vee, Inc., for personal reasons. The parties were properly notified of the hearing. A telephonic hearing was held at 10:00 a.m. on Monday, August 16, 2021. The claimant, Keri A. Greene, participated. The employer, Hy-Vee, Inc., participated through witness Valerie Scarr, HR Manager; and hearing representative Barbara Buss represented the employer. No exhibits were offered or admitted into the record.

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: Claimant was employed part time, most recently as a server, from October 9, 2018, until November 8, 2020, when she was discharged from employment.

Claimant is a single mother. During her employment, she was available to work for the employer Monday through Friday during the day and every other weekend.

Claimant had been off work for a large portion of 2020 due to the COVID-19 public health emergency. She checked in with the employer in late October 2020 to provide her updated address, as she had recently moved. During a conversation with the employer, claimant learned that the employer had shifts available on the weekends. Claimant reiterated that she was available to work every other weekend. The employer indicated this would work on their end as well.

Claimant was scheduled to work on November 1, 2020. She showed up for work and completed her scheduled shift. Claimant was next scheduled to work on November 8, 2020. Claimant did not know she was scheduled to work this day, as it was an "off" weekend in her every other weekend rotation. Additionally, claimant had called earlier in the week and confirmed that she was not scheduled that weekend. By the time the employer contacted her and informed her that she was scheduled, it was almost time for the shift to start and too late for her to get childcare, so she could not work.

Claimant continued to contact the employer on a weekly for the next four to six weeks, expressing her availability to work weekend shifts. However, claimant was never scheduled again. Eventually, claimant stopped calling the employer because when she called to ask about whether she was on the schedule, she was informed that not only was she not scheduled, but her name had been removed from the schedule entirely.

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. Benefits are allowed, provided claimant is otherwise eligible.

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). Here, there is no evidence in the record that claimant ended the employment relationship. Claimant had no intention to quit her employment, and she took no overt action to indicate any such intention. Therefore, this case will be analyzed as a discharge and the employer bears the burden of proving disqualifying 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all, provided the discharge is not contrary to public policy. However, if the employer fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to discharge for the incident under its policy.

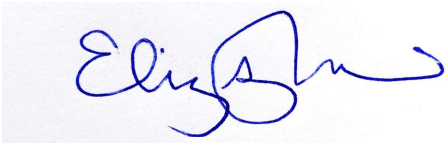
An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

Here, the final incident triggering claimant's separation appears to be claimant missing the November 8 shift. There was miscommunication surrounding this shift. When claimant called during the week prior to this shift, she was not scheduled to work the weekend shift. However,

the employer then contacted her on November 8 and asked her to work. That gave claimant little notice and no opportunity to secure childcare so she could report to work. At most, the November 8 event amounts to a sole incident of unexcused absenteeism. One unexcused absence is not disqualifying misconduct. Benefits are allowed.

DECISION:

The June 8, 2021 (reference 01) unemployment insurance decision is reversed. 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 on this basis shall be paid.



Elizabeth A. Johnson
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August 19, 2021
Decision Dated and Mailed

lj/kmj