

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

MONETTE L HEINOLD
622 N PENN APT 2
MASON CITY IA 50401

SECURITAS SECURITY SERVICES USA
c/o TALX UC EXPRESS
PO BOX 429503
CINCINNATI OH 45242

Appeal Number: 04A-UI-11763-DT
OC: 10/03/04 R: 02
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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Securitas Security Services USA, Inc. (employer) appealed a representative's October 20, 2004 decision (reference 01) that concluded Monette L. Heinold (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 November 23, 2004. The claimant participated in the hearing. Robert Eckhardt of TALX UC Express appeared on the employer's behalf and presented testimony from two witnesses, Shelsie Greenfield and Stacy Coonie.

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 on August 24, 2004. She worked full time as security officer in the employer's contract security business in Mason City, Iowa. Her last day of work was October 4, 2004.

The claimant had initially worked at one of the employer's business clients that was in an industrial setting. The claimant complained that the conditions in the guard shack provided at that location were too dirty and unsanitary. The employer acknowledged that conditions at that client were not good, and agreed to transfer the claimant to another business client. The claimant stayed at the industrial client location through September 28 to allow the employer to find a replacement.

The claimant started at the other business client location on October 1, 2004. This client was a retail sales mall. The vast majority of the claimant's time she was required to be walking a circuit in the mall; however, she did need to spend a portion of her time in the security office provided by the client. The claimant found that the security office in the mall was also extremely unsanitary due to accumulated dust and dirt, stacks of old newspapers, water damage, and a dirty refrigerator. She worked through October 3, and on October 4 called Ms. Greenfield, the human resources manager located in the employer's Des Moines, Iowa office, responsible for the Mason City operations. The claimant reported to Ms. Greenfield that the mall security office was too dirty and crowded. She indicated her desire to be moved to yet another client. Ms. Greenfield responded that the mall operation was the cleanest site the employer had in Mason City, so that the claimant might as well turn in her uniform and leave. The claimant asked if Ms. Greenfield wanted her to stay and work her shift that night, October 4, and Ms. Greenfield agreed that she should. The claimant did work until her relief reported, and then changed, turned in her uniform, and left.

The claimant had previously seen the employer's security office at another industrial client and had found it to be satisfactorily clean. Upon her hire, she had understood that Ms. Greenfield was going to try to transfer her to that client account.

The claimant established an unemployment insurance benefit year effective October 3, 2004.

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 her job by declining to continue working at the mall location and refusing to be transferred to other available client locations. The claimant asserted that she had reaffirmed her desire to continue working for the employer, but that she was told to turn in her uniform and was not given an option to go to other clients. Ms. Greenfield asserted that she had listed other clients to the claimant offering to transfer her to those other accounts, but the claimant declined. The administrative law judge finds that the claimant's recollection of the final conversation between the two of them is more accurate (noting that Ms. Greenfield originally testified incorrectly that the conversation had taken place on October 5, after the claimant's last shift, rather than prior to her last shift). The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code Section 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 the conclusion that the claimant's expectations as to work environment were unrealistic and unattainable. 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.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code Section 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code Section 96.19-3. The claimant's base period began July 1, 2004 and ended June 30, 2004. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's October 20, 2004 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