IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

SARA L KRAUSMAN Claimant **GRAYSON ENTERPRISES INC** **VINNY VANUCCHI'S LITTLE ITALY** Employer	**APPEAL 16A-UI-10593-DL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/28/16** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 19, 2016, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on October 25, 2016. Claimant participated. Employer participated through general manager Corey Lugrain.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time server at the Dubuque restaurant through July 29, 2016. She hit her head on a shelf at home earlier that morning. She reported to work and after an hour manager Nicole Dempewolf suggested claimant go home because she was not remembering orders. Claimant told her about hitting her head on the shelf. Dempewolf did not accuse her of being under the influence or ask her to submit to a drug screen. Dempewolf drove her home about 2 p.m. and told her to let her know if she would miss her shift later because she was going to the doctor. Claimant decided not to go to the emergency room because she cannot drive and did not have a ride. Lugrain arrived at the restaurant after claimant left. Someone on behalf of the employer notified her parole officer that she left work early and/or was suspected of being under the influence. The sheriff arrived about 5:30 p.m. and took her into custody for a reported probation violation. Claimant notified Lugrain by telephone that she had been detained and was uncertain about when she would be released. The employer hired a replacement the next day. (Administrative record.) She was never asked to submit to a drug screen by the employer or the parole officer.

She had a hearing before an administrative law judge (ALJ) on August 11 and stipulated she would go to the correctional facility, where she remained until August 29 when she was released

to the Dubuque Residential Facility on work release. When released claimant went to Demewolf to offer her services. No work was available, however, she is eligible to reapply for work.

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.

While the employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. *Irving v. Emp't Appeal Bd.*, No. 15-0104, 2016 WL 3125854 (Iowa June 3, 2016). "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". *Id*. (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1986)).

The term "voluntary" requires volition and generally means a desire to quit the job. *Id*. (citing *Bartelt v. Emp't Appeal Bd.*, 494 N.W.2d 684, 686 (Iowa 1993); *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Cook*, 299 N.W.2d at 701 (Iowa 1986); *Moulton v. Iowa Emp't Sec. Comm'n*, 34 N.W.2d 211, 213 (1948)). There must be substantial evidence to show that claimant's absence from work was voluntary. Incarceration, in and of itself, can never be considered volitional or voluntary. If the leaving was not voluntary, then there is no analysis into whether or not the employee left with good cause attributable to the employer because the case must be analyzed as a discharge. *Id.* (citing *Ames v. Emp't Appeal Bd.*, 439 N.W.2d 669, 673-74 (Iowa 1989)(employees refusing to go to work and cross union picket line due to the risk of violence associated with crossing the picket line was not a voluntary quitting of employment).

However, predicate acts that lead to incarceration can rise to level of conduct which would disqualify a claimant from receiving benefits. *Id*. Those predicate acts, however, must be volitional and must lead to an absence from the workplace which results in a loss of employment. *Id*. Further, the circumstances that led to the incarceration must establish volitional acts of a nature sufficient to allow a fact finder to draw the conclusion that the employee, by his or her intentional acts, has purposively set in motion a chain of events leading to incarceration, absence from work, and ultimate separation from employment. *Id*. Lastly, if an employee fails to notify the employer of the status of his or her incarceration, or engages in deception regarding the incarceration, that may result in a voluntary quit or disqualifying misconduct. *Id*. It must also be analyzed whether or not the employee was capable of notifying the employer of the status of the incarceration and what steps the employee took to notify the employer.

Because the claimant was detained because of an allegation of drug use but she was not confronted or tested by the employer or the parole officer, and claimant called the employer from jail in an attempt to retain her employment, there is no evidence of volitional acts leading to the incarceration or that she intended to quit or abandon her job. Thus, the separation was a discharge, the burden of proof falls to the employer, and the issue of misconduct is examined.

Iowa Code section 96.5(2)a provides:

> **Causes for disqualification.**
> 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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted). …the definition of misconduct requires more than a "disregard" it requires a "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." Iowa Admin. Code r. 871–24.32(1)(a) (emphasis added).

Iowa Admin. Code r. 871-24.32(7) provides:

> (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct *except for illness or other reasonable grounds* for which the employee was absent and that were properly reported to the employer.

(Emphasis added.)

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). Inasmuch as the employer replaced claimant for missing one shift due to illness, and did not require a drug screen or otherwise rebut claimant's credible testimony that her behavior was related to hitting her head earlier, the employer has not met the burden of proof to establish that claimant engaged in misconduct. Benefits are allowed.

DECISION:

The September 19, 2016, (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. Any benefits withheld shall be paid to claimant.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs