IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

WENDY A VANCE
Claimant

DAVENPORT COMMUNITY SCH DIST
Employer

APPEAL NO. 14A-UI-06296-MT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/16/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 4, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 11, 2014. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Exhibit A was admitted into evidence.

ISSUE:

The issues in this matter are whether claimant was discharged for misconduct or whether claimant quit for good cause attributable to employer in lieu of discharge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 24, 2014. Claimant resigned on February 24, 2014. Claimant was given the chance to resign or face discharge. Claimant would have faced discharge but for the involuntary resignation. Claimant quit because she did not want a discharge on her record. Claimant's resignation conferred a benefit on employer by avoiding a discharge on an employee suffering from chronic illness.

Claimant did not receive the April 4 decision in the mail. Claimant's first notice of an adverse decision was June 14. Claimant appealed promptly after discovery of an adverse decision.

Claimant quit because she was going to be discharged for absenteeism caused by illness. Claimant did not believe she would ever work again if she had a discharge on her record.

REASONING AND CONCLUSIONS OF LAW:

Claimant quit in lieu of facing discharge from employment. This is not a disqualifiable event because claimant involuntarily separated from employment to avoid the discharge. The rules specifically state that benefits shall be allowed when a person quits in lieu of discharge.

The section heading defines the reason for the list as: "The following are reasons for a claimant leaving employment with good cause attributable to the employer." 871IAC24.26. The rule in question is found at paragraph number 21. Nothing in this entire rule mentions a misconduct analysis. Nothing in the sections allow for an exception. The rule states that this is not a voluntary leaving. It is not a true voluntary quit nor is it a discharge. It is an involuntary quit, a different type of separation not disqualifying under Iowa Code Section 96.5-1 as a voluntary quit nor under 96.5-2-A as a discharge for misconduct. Nothing is said about shifting the issue to misconduct. Nor is there any indication that the legislature intended for any of the examples under the rule to be for any other reason than for "leaving employment with good cause." After a thorough review of the legislative history, nothing is shown demonstrating that this rule means that this is an issue of misconduct.

There is a difference in opinion on this issue within the appeals bureau. The plain reading of the rule has but one logical conclusion. There is no language that shifts the issue and burden of proof from a quit to a misconduct issue. The language, "the following are" is a mandatory directive. Nor do the rules of statutory construction allow for a misconduct analysis under this rule. Recent tradition within the appeals bureau (1997) has been to shift this type of case to the issue of discharge for misconduct. The approach is only supported by other state statutes and rules which shift this issue to misconduct. Iowa, unlike other states, does not have any language allowing a shift of issue. Take Oregon for example where it is clearly spelled out that this is an issue of misconduct. ORS 657.176(7) states in part: "(c) The voluntary leaving of work occurred no more than 15 days prior to the date of the impending discharge, then the separation from work shall be adjudicated as if the voluntary leaving had not occurred and the discharge had occurred."

This 1997 approach gives the employer a second bite at the apple, so to speak. Shifting of the issue from quit to discharge renders this rule irrelevant. The new 1997 interpretation has the effect of rescinding the rule. If paragraph 21 did not exist it would be the same result. There is no reason for the legislature to create a rule to do something that is already apparent under current law. The undersigned has always disagreed with this 1997 complicated legal analysis and re-interpretation. It is noted that administrative law judges are prohibited from engaging in complicated legal analysis.

The Agency's Automated Numeric Data System (ANDS) decision has for decades allowed benefits when there is a quit in lieu of discharge. The decades old ANDS decision form is the best evidence of legislative history and Agency interpretation. Long standing Agency practice should not be disturbed absent rule making, judicial interpretation or code amendments. Administrative Law Judges should never engage in complicated legal analysis. Administrative Law Judges are not policy makers. The Administrative Law Judge must apply the law as written. Since no rule or code section identifies a shifting of the issue to misconduct it is entirely inappropriate to create such a rule by administrative case law. The job of legislating from the bench is left to the appellate courts.

The rule specifically states that quitting under such duress is a quit for good cause attributable to employer. We, as administrative law judges, are bound by the enabling statues and rules. Absent a specific rule that shifts this issue to misconduct, this is a non disqualifying event as shown by a plain reading of the rule. Employers receive significant legal benefit when an employee chooses to quit rather than face discharge. Shifting the issue to that of a discharge for misconduct unjustly enriches the employer. Shifting the issue to misconduct also robs the employer of decision making capability during a termination of employment. There is little in unemployment law that allows employers and claimants the ability to settle a legal dispute.

This single provision allows a trade of assets with a known result. Employers can negotiate a termination of employment while claimant gives up the right to sue for discharge. Through a complicated legal analysis the judicial activists have stolen that opportunity from the residents of this state.

When first introduced, the rule history was explained, that qualification is automatic under this circumstance because of the benefit conferred on the employer by a voluntary resignation. The oral history from aged Administrative Law Judges bears witness to this history. That history has been ignored far too long resulting in many unfair overpayment cases.

The department's fact-finding ANDS decision, which has remained static for decades, still reflects the original intent of the rule. The ANDS form finds that a quit when faced with a quit or discharge scenario, is a quit with good cause attributable to the employer. Changing that interpretation on a whim creates unnecessary overpayments and hampers adjudication predictability.

The administrative law judge holds that claimant was not discharged for an act of misconduct and was not a voluntary quit and, as such, is not disqualified for the receipt of unemployment insurance benefits. This is a quit for good cause attributable to employer based on the administrative rule.

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 Admin. Code r. 871-24.26(21) provides:

> 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:
>
> (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

Researching rule history is cumbersome and tedious for a complete history. In the administrative code (http://www.legis.state.ia.us/IAC.html) at the end of every chapter (PDF version) there is a history for all the rules in the chapter (not by individual rule but by chapter). In the case of 871 IAC Chapter 24 the history from that chapter is copied and given below. One must then look at the individual amendment filings to see which rules(s) were changed in that filing by using the published date and looking at the administrative bulletin (http://www.legis.state.ia.us/aspx/BulletinSupplement/bulletinListing.aspx) for the appropriate published dates. (The bulletins are electronically archived only back to 1997. Published bulletins prior to 1997 are available in paper form in the state law library. If you go too far back there are no bulletins but merely fillings by date.) The Legislative Services Bureau has identified the origin of this rule as 1975. The bureau did not find any comments on this particular paragraph which appears to remain unaltered since its inception. There is absolutely no legislative history supporting a misconduct analysis. However, some 250 pages were deleted from the publication. It is unknown if the deleted 250 pages contain any information on the rule in question.

Even if claimant had not quit she would be allowed benefits. Absenteeism caused by illness is not misconduct where claimant properly reported her absences.

The undersigned has completed this research; the procedure is set forth for appellate review:

"This rule is intended to implement Iowa Code section 96.5(10).
[Filed 12/29/55; amended 12/29/58, 6/23/59, 12/4/59, 11/22/61, 4/21/72]
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1 See rule 345—4.50(96)
2 Effective date of 24.26(14) and 24.26(15) delayed 70 days by the Administrative Rules Review Committee at its meeting held
March 8, 1999."

DECISION:

The decision of the representative dated April 4, 2014, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

_____
Marlon Mormann
Administrative Law Judge

_____
Decision Dated and Mailed

mdm/can