

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAUNDRA K COVARRUBIAS-TROUP
Claimant

APPEAL 20A-UI-15137-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOVE'S TRAVEL STOPS AND COUNTRY S
Employer

OC: 08/16/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 9, 2020 (reference 01) unemployment insurance decision that denied unemployment insurance benefits to the claimant based upon her voluntarily quitting work. The parties were properly notified of the hearing. A telephone hearing was held on January 21, 2020. The claimant, Sandra K. Covarrubias-Troup, participated personally. Mary Hardee participated as a witness for the claimant. The employer, Love's Travel Stops and County S, participated through witnesses Margarita Kopf and Brian Oetker. Claimant's Exhibit A was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a crew member at the employer's fast food restaurant. Her employment began on October 3, 2019 and ended on Monday, August 17, 2020 when she was discharged from employment.

Claimant had been having issues with another co-worker using profanity in the workplace. This included using profane language in general and directed towards her specifically. This included him calling her a bitch and flipping her off. Claimant complained to management about the co-worker's use of profanity in the workplace. The profanity use continued.

On Saturday, August 15, 2020, the claimant worked her shift with this co-worker. During the shift the restaurant was out of stock of numerous items. Customers were angry. The co-worker used profanity toward the claimant during her shift.

Claimant returned the following day to work on Sunday, August 16, 2020. She asked if the restaurant was still out of stock on supplies and the co-worker responded to her that it was and again used profane language towards her. Claimant informed a supervisor that she was not

mentally able to continue with her shift that day. She contacted a co-worker who was residing on site to see if he would cover her shift, which he agreed to do. Claimant waited for the co-worker to come inside to cover her shift and informed her supervisor that she had to leave for the day. She attempted to contact Ms. Kopf about her co-worker and the lack of supplies but Ms. Kopf did not answer her phone. Claimant was able to get in contact with the District Manager, Matt, and informed him about the working conditions that caused her to leave that day.

The claimant called another co-worker the next day on Monday, August 17, 2020 to see what hours she was scheduled to work and she was informed that she had been taken off the schedule. Claimant then went into the premises on Monday, August 17, 2020 to speak to Ms. Kopf about why she was taken off the schedule. Ms. Kopf told her that she was not happy working there and that she was done. Claimant had no previous discipline during the course of her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

The first issue is whether the claimant voluntarily quit when she left her shift on Sunday, August 16, 2020. The administrative law judge finds that she did not.

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.

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). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). It is the employer's burden to establish that the claimant voluntarily quit. See Iowa Code § 96.6(2).

In this case, claimant had no intention to quit and there was no overt act by the claimant that would have carried out any intention to quit. Claimant found a replacement for her shift, contacted management about the continued detrimental working conditions, and then contacted a co-worker to inquire when her next shift was. These are not overt actions evidencing someone's intention to quit, quite the opposite. Claimant asked Ms. Kopf why she was taken off the schedule and she was told that she was done. This was a discharge from employment. As such, the employer has the burden of proof to establish that the claimant was discharged for a final incident of substantial job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

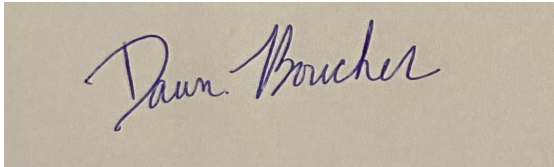
The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act

is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Claimant's actions in advising management that she was unable to complete her shift, finding a replacement prior to leaving, and contacting upper management about her concerns with her working conditions are not incidents of insubordination or any other type of substantial job-related misconduct. The employer has failed to establish any incident of disqualifying job-related misconduct that would disqualify the claimant from receipt of benefits. As such, benefits are allowed, provided the claimant is otherwise eligible. The employer's account may be charged for benefits paid.

DECISION:

The November 9, 2020 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



Dawn Boucher
Administrative Law Judge

February 9, 2021
Decision Dated and Mailed

db/kmj