

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BAILIE A MEISSNER
Claimant

CITY OF MANCHESTER
Employer

APPEAL 21A-UI-07436-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-23.43(9)a – Combined Wage Claim Relief of Charges

STATEMENT OF THE CASE:

On March 11, 2021, City of Manchester (employer) filed an appeal from the March 9, 2021, reference 01, unemployment insurance decision that found the employer cannot be relieved of charges based on benefits paid by another state. The parties were properly notified about the hearing held by telephone on June 14, 2021. The claimant participated personally. The employer participated through Julie Schmitz, Deputy City Clerk and Human Resources. No exhibits were offered into the record.

ISSUE:

Can the Iowa employer be relieved of benefit charges on the combined wage claim?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed in a seasonal part-time position as a Lifeguard beginning on May 23, 2016. The claimant separated from employment in August 2019, when the pool closed for the summer. The employer did not have any work available for the claimant after the pool closed. The claimant filed a combined wage claim for unemployment insurance benefits in another state and the base period includes wage credits paid by the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work and was not discharged for work-related misconduct nor did she voluntarily quit without good cause attributable to the employer; therefore, the employer's account cannot be relieved of charges on the combined wage claim.

Iowa Code section 96.5 provides, in relevant part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

...

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 disqualification shall continue 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. 871-24.1(113)a provides:

Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

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. 871-23.43(9)a and b provide:

Charging of benefits to employer accounts.

(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

b. The Iowa employer whose wage credits have been transferred and who has potential liability will be notified that the wages have been transferred, the state to which they have been transferred, and the mailing address to which a protest of potential charges may be mailed. This protest must be postmarked or received by the department within ten days of the date on the notice to be considered as a timely protest of charges. *If the protest from either the reimbursable or contributory employer justifies relief of charges, charges shall go to the balancing account.* [Emphasis added.]

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 her employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 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).

In this case, the claimant did not make a voluntary choice to end her employment. The pool closed and the employer no longer had work available for her. Therefore, the separation must be analyzed as a discharge.

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). In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all, if it is not contrary to public policy. However, if it 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. 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."

There is no indication the claimant was separated from employment due to job-related misconduct. The parties agreed her seasonal employment ended when the pool closed. Therefore, the claimant was not separated for a disqualifying reason.

The employer shall not be relieved of charges on this combined wage claim since it did not meet its burden of proof to establish the claimant was separated from employment due to disqualifying job-related misconduct and would not have been relieved of charges based upon this fact scenario on an Iowa claim. The claimant's qualification and eligibility shall be determined by the state in which the claim was filed.

DECISION:

The March 9, 2021, reference 01, unemployment insurance decision is affirmed. The account of the employer cannot be relieved of charges based on benefits paid by another state. The claimant's qualification and eligibility shall be determined by the state in which the claim was filed.

A handwritten signature in dark ink, appearing to read "Stephanie R. Callahan", with a long horizontal flourish extending to the right.

Stephanie R. Callahan
Administrative Law Judge

June 30, 2021
Decision Dated and Mailed

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