

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CLARA J LOGAN

Claimant

GASLAND EXPRESS INC

Employer

APPEAL 20A-UI-03397-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20

Claimant: Appellant (2)

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

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant filed an appeal from the April 24, 2020 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 15, 2020, at 1:05 p.m. Claimant participated. Employer did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant was employed as a part-time clerk from April 2016 until her employment with Gasland Express, Inc. ended on March 26, 2020. Claimant's direct supervisor was Kurt Sammons, Manager. On March 20, 2020, claimant informed Sammons that she could not return to work until certain safety measures related to Covid-19 were in place. Specifically, employer had no cleaning and disinfecting supplies. Claimant offered to come to work early to make coffee and breakfast prior to the store opening for customers. Sammons told claimant "don't bother." On March 26, 2020, Sammons told claimant that her check was ready to be picked up and that she needed to return employer's keys. Claimant considered this to be termination of her employment. On March 31, 2020, claimant went to the store on personal business and Sammons told her to get out and that she was banned from the store. Claimant considered this as confirmation that she had been terminated. Claimant did not tell employer she quit and had no intention of quitting her job. Claimant intended to return to work when safety measures were in place. Claimant had no prior disciplinary warnings and did not believe her job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not voluntarily quit her employment; claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code §§ 96.5(1). 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). Where there is no expressed intention or act to sever the employment 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, claimant had no intention of terminating her employment relationship with Gasland Express, Inc. as evidenced by her stating that she would return after safety measures were in place and offering to work prior to the store opening to customers. Because claimant did not voluntarily quit her job, claimant's separation from employment must be analyzed as a discharge.

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 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. 871-24.32(1)(a) provides:

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 of misconduct 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). Further, 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).

There is no evidence of misconduct by claimant. Employer has not met its burden of proving disqualifying job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

DECISION:

The April 24, 2020 (reference 02) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible. This decision is duplicative of the decision made in Appeal 20A-UI-03396-AW-T.



Adrienne C. Williamson
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May 20, 2020
Decision Dated and Mailed

acw/scn