

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CONSUELO LOPEZ RAYA
Claimant

SWIFT PORK COMPANY
Employer

**APPEAL 20A-UI-10184-HP-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/21/20
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant Consuelo Lopez Raya filed an appeal from an August 14, 2020 (reference 01) unemployment insurance decision that denied benefits because she voluntarily quit her employment with Swift Pork Company (“Swift”), for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on October 6, 2020. Jesus, a Spanish interpreter with CTS Language Link provided Spanish interpretation services during the hearing. Lopez Raya appeared and testified. No one appeared on behalf of Swift during the hearing. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

On April 13, 2019, Lopez Raya commenced full-time employment in packing for Swift. Lopez Raya regularly worked overtime.

On June 10, 2020, Lopez Raya went to work. After work, Lopez Raya started vomiting and she did not feel well. Lopez Raya went to the doctor the next day, June 11, 2020. Her doctor performed a test for Covid-19 and told her to quarantine. Lopez Raya called in sick to Swift the next four days. Lopez Raya’s doctor told her the test was negative on Sunday, June 14, 2020.

On Monday, June 15, 2020, Lopez Raya went back to the doctor. The doctor told her she did not have health insurance. Lopez Raya called Swift and asked what had happened. The person she spoke with said she did not know. Lopez Raya reported Swift never told her why her employment ended. No one appeared on behalf of Swift to rebut her testimony.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides an individual “shall be disqualified for benefits, regardless of the source of the individual’s wage credits: . . . If the individual has left work voluntarily without good cause attributable to the individual’s employer, if so found by the department.” The Iowa Supreme Court has held a “voluntary quit” means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer.” *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires “an intention to terminate the employment relationship accompanied by an overt act carrying out the intent.” *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). “Good cause” for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm’n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant’s departure from employment was voluntary. *Irving v. Emp’t Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016).

871 Iowa Administrative Code 24.25 provides “[i]n 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 from whom the employee has separated.” Lopez Raya testified she did not resign from Swift. She reported she worked on June 10, 2020. Lopez Raya felt sick and she was vomiting. On June 11, 2020 she went to the doctor and received a test for Covid-19. The doctor told her to quarantine. Lopez Raya called in sick to work June 11, 2020 through June 14, 2020. She received her test result on June 14, 2020, which was negative. The next day she went back to the doctor and the doctor told her she no longer had health insurance. Lopez Raya contacted Swift and the person she spoke with stated she did not know what had happened. I do not find Lopez Raya voluntarily quit her employment with Swift.

Under Iowa Code section 96.5(2)a,

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

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.

871 Iowa Administrative Code 24.31(1)a, defines the term “misconduct” 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 Iowa Legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) also provides,

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.

871 Iowa Administrative Code 24.32(8) also provides:

Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

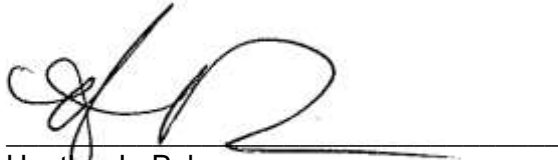
The employer bears the burden of proving the employee engaged in disqualifying misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984).

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, 808 (Iowa Ct. App. 1984). The definition of misconduct in the administrative rule focuses on deliberate, intentional, or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). Additionally, poor work performance is not misconduct in the absence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211, 213 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 666-69 (Iowa 2000). What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988). Instances of poor judgment are not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986).

Lopez Raya testified she did not know why her employment ended. Swift did not attend the hearing to assert she was discharged for any disqualifying reason. Benefits are granted.

DECISION:

The August 14, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed in favor of the claimant/appellant. Benefits are allowed, provided the claimant is otherwise eligible.

A handwritten signature in black ink, appearing to read 'H. Palmer', is written over a horizontal line.

Heather L. Palmer
Administrative Law Judge
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October 8, 2020
Decision Dated and Mailed

hlp/sam