

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEA M SORENSON

Claimant

APPEAL NO: 14A-UI-01044-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEBSTER CO METRO LAW ENFORCEMENT

Employer

OC: 01/05/14

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Dea M. Sorenson (claimant) appealed a representative's January 28, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment after a separation from employment from Webster County Metro Law Enforcement (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 19, 2014. This appeal was consolidated for hearing with on related appeal, 14A-UI-01045-DT. The claimant participated in the hearing. Jamie Anderson appeared on the employer's behalf and presented testimony from one other witness, Heidi Smith. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 1, 2007. She worked full time as an overnight dispatcher in the employer's law enforcement telecommunications center. Her last day of work was the shift on the evening of September 21 into the morning of September 22.

Since May of 2011 the claimant had suffered several seizures. In part because of a concern about the possibility that the claimant might have a seizure while on duty, since June 2012 there had been another dispatcher on duty at the same time the claimant was working her shift. After September 21 the claimant suffered a serious seizure and went on a medical leave of absence. She continued to suffer one or two seizures per week. Her doctor has indicated that some of the seizures are epileptic, and others are not.

The employer had a meeting with the claimant on January 7, 2014 to discuss her status as being able to return to work. The claimant's doctor had not advised that she could not or should

not work, but as the claimant was still suffering periodic seizures, while she was willing to attempt to return to work, the employer was unwilling to allow the claimant to return to work, even if there was another dispatcher on duty, as the employer felt there was still too much risk. The employer indicated that if the claimant tendered her resignation, it would not contest her eligibility for unemployment insurance benefits. As a result, the claimant did tender her resignation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

871 IAC 24.25 provides that, in 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. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993). The claimant did not have the intent to sever the employment relationship necessary to treat the separation as a "voluntary quit" for unemployment insurance purposes; she did not have the option to continue her employment; she could either quit or be discharged. 871 IAC 24.26(21). As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

The next issue in this case is then whether the employer effectively discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was the concern about the risks of the claimant suffering a serious seizure while on duty. Even if the employer had a good business reason for declining to allow the claimant to return to the employment, the employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 28, 2014 decision (reference 01) is reversed. The claimant did not voluntarily quit and the employer did effectively discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs