IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MICHAEL T HANSEN Claimant **AVEKA NUTRA PROCESSING** Employer	**APPEAL 17R-UI-10305-CL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/07/16** **Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 3, 2017, (reference 02) unemployment insurance decision that denied benefits based upon his availability for work. A hearing was held on August 24, 2017. On August 30, 2017, administrative law judge Stephanie Callahan issued a decision denying benefits based on claimant's availability for work. Claimant filed an appeal with the Employment Appeal Board (EAB). On October 9, 2017, the EAB issued a decision reversing ALJ Callahan's decision and finding claimant available for work. The EAB remanded the case to an administrative law judge in the Appeals Bureau for a hearing and determination on whether claimant's separation from employment disqualifies him from receiving unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 26, 2017. Claimant participated personally and was represented by attorney Todd Schmidt. Employer did not register for the hearing and did not participate.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in January 2015. Claimant last worked as a full-time bagger and packager. Claimant was separated from employment on July 25, 2017, when he was discharged.

Employer requires employees working in claimant's position to work rotating weekends. When claimant began his employment he worked the evening shift. Claimant has a ten-year old daughter. It became increasingly difficult for claimant to find child care. In 2016, claimant explained his situation to employer and requested more daytime hours. Employer seemed amenable to accommodating claimant and scheduled him to work swing shift. His daughter was

diagnosed with special needs in February 2017, which further complicated securing reliable child care.

On May 25, 2017, claimant requested to work first shift Monday through Friday and no weekends. Claimant stated it was okay with him if the change resulted in him being considered a part-time employee. Employer did not respond to the request, but instead began assigning claimant to work the requested schedule.

In June 2017, employer hired two employees to work the same schedule as claimant. The employees were seasonal and were paid only $12.00 per hour. Claimant was being paid $17.00 per hour. After claimant finished training the employees, employer no longer put him on the schedule. Claimant's last day of work was July 7, 2017. Employer did not say anything to claimant about his continued employment until July 25, 2017, when the plant foreman sent claimant a text message. The foreman asked claimant to stop by the workplace. When claimant came in, employer explained it was laying him off due to his unavailability on weekends. Prior to this conversation, claimant was never made aware that limiting his availability could result in his separation from employment. Had claimant been aware of the possibility of completely losing his job, he would have made efforts to find daycare on weekends in order to retain his employment. Employer has not recalled claimant to work.

REASONING AND CONCLUSIONS OF LAW:

As a preliminary matter, claimant did not voluntarily resign from his employment with this employer. 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). In this case, claimant had no intent to end the employment. While he did take the overt act of requesting a specific schedule and stated he would be willing to be considered a part-time employee in order to work that schedule, he never stated he would resign if he was not granted the requested scheduling accommodation.

Thus, the decision to end the employment was the employer's. The next question is if the employer ended the relationship for a disqualifying reason. I conclude it did not.

Iowa Code § 96.5(2)a provides:

> 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 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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). 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 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, employer ended claimant's employment due to his request for a modified schedule. Employer could have declined the request and continued to schedule claimant to work weekends and leave it up to claimant to either resign or incur attendance violations. It did not. Instead, employer chose to end claimant's employment. Claimant was never warned that requesting a modified schedule could end his employment. Therefore, claimant did not act with intentional disregard to any of employer's policies or against its interests. Employer failed to establish claimant was separated from employment for disqualifying reasons.

DECISION:

The August 3, 2017, (reference 02) unemployment insurance decision is modified in favor of appellant. Claimant is able to and available for work pursuant to the EAB's October 9, 2017, decision. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Christine A. Louis
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Decision Dated and Mailed

cal/scn