

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDA L FOUDREE
Claimant

STAFF MANAGEMENT SOLUTIONS, LLC
Employer

APPEAL 21A-UI-15108-AR-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/28/21
Claimant: Appellant (2R)

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

STATEMENT OF THE CASE:

The claimant, Linda L. Foudree, filed an appeal from the June 23, 2021, (reference 02) unemployment insurance decision that denied benefits based upon the determination that claimant voluntarily quit employment with the employer, Staff Management Solutions, LLC, without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on August 30, 2021. The claimant participated personally. The employer participated through Susan Murphy.

ISSUE:

Did the claimant quit employment without good cause attributable to the employer, or was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a quality assurance analyst from December 8, 2015, until this employment ended on August 24, 2020, when she was discharged.

In March 2020, claimant became worried about the COVID-19 pandemic and its potential effect on her should she contract the virus. At the time, the employer was not instituting mitigation measures. Claimant approached one of her supervisors, Murphy, and informed her that she would be taking some time off work. Murphy approved the request.

Claimant maintained contact with the employer through another of her supervisors, Annette Corona, thereafter. Claimant often inquired about the employer's COVID-19 mitigation measures, but was apparently not told about the measures the employer put in place. The employer testified that it put mitigation measures in place according to CDC guidelines during late March 2020.

On August 24, 2020, claimant spoke with Murphy who informed claimant that her position was no longer available. Murphy did state that claimant could return part-time to another position “on the line,” but claimant did not wish to work on the line.

Claimant’s testimony indicates that there may be a question about her ability to and availability for work due to her own medical conditions and her efforts to protect herself against COVID-19. The issue of ability to and availability for work is not properly before the administrative law judge because notice of the issue has not been issued to the parties.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 96.5(1) provides:

An individual shall be disqualified for benefits:

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.

Iowa Code § 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 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).

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871—24.25(35). 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 a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

It appears that claimant maintained contact with the employer throughout the time after which she stopped working. Doing so indicated she intended to maintain the employment relationship. It was not until the employer affirmatively told her that her position was no longer available for her that the claimant understood her employment to be ended. The separation was 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). 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." *Id.*

There is no allegation from either party that claimant engaged in disqualifying job-related misconduct. Instead, the separation appears to have come about as the result of claimant's absence, which had been approved by the employer initially. The employer has not demonstrated that claimant engaged in job-related misconduct, as is its burden. No disqualification is imposed.

DECISION:

The June 23, 2021, (reference 02) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

REMAND:

For the reasons outlined in the Findings of Fact above, the issue of claimant's ability to and availability for work is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Alexis D. Rowe
Administrative Law Judge

September 2, 2021
Decision Dated and Mailed

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