

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELINE A OSTERKAMP
Claimant

**ANAMOSA COMMUNITY SCHOOL
DISTRICT**
Employer

APPEAL 15A-UI-12607-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/15
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the November 4, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on December 3, 2015. Claimant participated. Employer participated through high school principal Jacqueline Lahey. Claimant's Exhibit A was received. Employer's Exhibit 1 was received.

ISSUES:

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 was employed full time as a paraeducator from January 2001, and was separated from employment on October 16, 2015, when she quit. On October 13, 2015, Lahey saw and overheard claimant, who was walking with another paraeducator and two students, say about McGee speaking with Lahey's secretary, "Who is she telling on now?" Lahey called her into a meeting with assistant vice principal Brett Jones but did not call her a "cancer" or say she could not stand her face. Lahey did tell her that she was a negative force in the building and that day's conduct was the last straw of unprofessional behavior,. When she was told to go home for the day and they would meet again on October 15, claimant created unprofessional scene and told others not involved in the situation that administrators were sending her home for the day. In the meeting on October 15 with superintendent Lisa Bean and Lahey, Jones, para association president Lisa Keltner as a representative for claimant, she acknowledged receipt of the handbook and paraeducator standards (Employer's Exhibit 1, pp. 15 - 16) and admitted certain other objectionable conduct. (Employer's Exhibit 1, pp. 11 - 14) The employer told her to resign within 24 hours or she would be terminated so she quit.

She had a performance review on May 28, 2015, when Lahey told her she needed to improve in interpersonal skills, and be polite and courteous after having seen her rolling eyes after a directive about her schedule, making sarcastic comments and facial expressions, while not being accountable for her work and doing the “bare minimum.” (Employer’s Exhibit 1, pp. 4 - 7) On October 1 claimant and other paraeducator failed to follow the chain of command through their immediate supervisor special education teacher Dory McGee and called a meeting with physical education teachers without going through McGee or Lahey. Claimant was observed taking long lunches and cigarette breaks in her car, which resulted in the children not staying on their schedule or having to find coverage for claimant. As a result, Lahey changed her lunch to 10:30 so she would not be late helping students. She was also observed using her cell phone on March 11 when she was supposed to be working with students. She had cut out the inside of a book to conceal her phone. (Employer’s Exhibit 1, pp. 17 - 20) On September 21 she failed to supervise student Hunter in the hallway.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 Admin. Code r. 871-24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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).

Because claimant would have been fired had she not resigned, the involuntary separation was a discharge. The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant behaved unprofessionally in front of students and staff after having been counseled multiple times about similar issues. This is disqualifying misconduct.

DECISION:

The November 4, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

REMAND: The overpayment issue is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination as there were no scanned fact-finding notes available at the time of hearing.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css