

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY L POWERS

Claimant

APPEAL NO: 14A-UI-07216-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SONIC DRIVE-IN SIOUX CITY– TRINITY

Employer

OC: 06/15/14

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Amy L. Powers (claimant) appealed a representative's July 1, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Sonic Drive-In Sioux City – Trinity (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was convened on August 6, 2014 and reconvened and concluded on August 27, 2014. The claimant participated in the hearing. Mark Underwood appeared on the employer's behalf. On August 27, 2014 the claimant presented additional testimony from one other witness, Joshua Smith, and the employer presented additional testimony from one other witness, Diana Underwood. 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?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

After prior periods of employment with the employer, the claimant most recently started working for the employer on or about March 1, 2013. She worked part time (25 – 30 hours per week) as a car hop. Her last day of work was May 30, 2014.

The claimant did not work her scheduled shift on June 2. She may have sent a text message to indicate that she would be absent, but she did not directly call the employer to report she would be absent. On June 3 she spoke to the employer and indicated that she was having some problems with her eyes and would need to be off for some time. She was scheduled to work on

June 4, and the employer assisted the claimant in finding someone to cover that shift. She was also scheduled for a shift on June 6, but was a no-call/no-show for that shift.

On June 8 the claimant contacted a manager and asked why she was not on the schedule for work in the upcoming weeks. She indicated that her medical issue was resolved and that she wished to return to work. The manager indicated that he had been instructed to remove her from the schedule, but that she would need to speak to the owners. The claimant kept calling the business to speak to the owners, but was unable to reach them. On June 13 she again spoke to another manager, who also indicated there was nothing he could do. In fact, the employer had determined to fill the claimant's position.

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.

Rule 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 and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that she voluntarily quit by job abandonment, primarily through the no-call, no-show on June 6. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. Rule 871 IAC 24.26(21).¹

The issue in this case is then whether the employer 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. Rule 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

¹ Even if the separation was treated as a voluntarily quit, it was for a compelling personal medical issue, and her period of absence before she sought to return to work was less than ten days, so the quit would not be disqualifying. Rule 871 IAC 24.25(20).

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. Rule 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. Rule 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 her absence from work on June 2 and June 6, 2014. Excessive unexcused absences can constitute misconduct, however, in order to establish the necessary element of intent, the final incident must have occurred despite the claimant's knowledge that the occurrence could result in the loss of her job. *Cosper*, supra; *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). The employer has not established the claimant had excessive unexcused absences or that she had been previously warned regarding her attendance. The employer knew or should have known that the claimant would be absent for at least some time after June 4, 2014, so the June 6 absence cannot be considered unexcused. *Floyd v. Iowa Dept. of Job Service*, 338 N.W.2d 536 (Iowa App. 1986). Even if the employer had a good business reason for proceeding to fill the claimant's position, 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 July 1, 2014 decision (reference 01) is reversed. The claimant did not voluntarily quit and the employer did 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

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