IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

JULIE A NATION
Claimant

GREGG YOUNG CHEVROLET OF NORWALK
Employer

APPEAL NO. 18A-UI-04170-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/04/18
Claimant: Appellant (5)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Julie Nation filed a timely appeal from the March 30, 2018, reference 03, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Nation voluntarily quit on March 1, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 27, 2018. Ms. Nation participated personally and was represented by Colt Moss. Jennifer Groenwold of Equifax represented the employer and presented testimony through Jodi Mumma, Alex Morton, Gary Burton, Laura Gebaur and Brian Biggerstaff. Exhibits 1 through 5 were received into evidence. The administrative law judge took official notice of the fact-finding documents.

ISSUE:

Whether Ms. Nation separated from the employment for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Julie Nation was employed by Gregg Young Chevrolet of Norwalk as a full-time insurance salesperson from December 2016 until March 1, 2018, when the employer discharged her from the employment for insubordination. Ms. Nation's job was to sell auto insurance to customers who purchased vehicles from Greg Young Chevrolet of Norwalk. The optimal time and opportunity to sell auto insurance to those customers was at the time of the vehicle purchase. The optimal place to make the insurance sale was face-to-face with the customer at the auto dealership. From the start of the employment, the mutual understanding between Ms. Nation and the employer was that Ms. Nation would spend at least 40 hours per week at the dealership engaged in her insurance sales duties. From the start of the employment, the parties had the additional mutual understanding that Ms. Nation would remain available by telephone and via computer to facilitate insurance sales during dealership hours of operation or outside those hours if necessary. Ms. Nation worked on commission and received a $2,000.00 monthly draw. Until February 23, 2018, Brian Biggerstaff, Insurance Manager, was Ms. Nation's immediate supervisor. Mr. Biggerstaff was stationed in Omaha, whereas Ms. Nation was stationed at the

automobile dealership in Norwalk. On June 7, 2017, Ms. Nation gave birth to a daughter. Following a period of maternity leave, Ms. Nation returned to the full-time employment effective July 20, 2017. At the time Ms. Nation returned to work in July 2017, she had full-time, inexpensive childcare arranged for her baby.

In November 2017, Ms. Nation lost her full-time, inexpensive childcare provider when that person returned to school. Because Ms. Nation elected not to have her baby vaccinated against communicable diseases, she could not send her baby to formal daycare. Because Ms. Nation's limited funds restricted her childcare options. In November, Ms. Nation spoke to Mr. Biggerstaff regarding her childcare crisis. In light of the crisis situation and Ms. Nation's representation that Ms. Nation would secure new full-time childcare in the immediate future, Mr. Biggerstaff acquiesced in Ms. Nation dividing her work time between the auto dealership and her home. What followed were several unsuccessful attempts by the Mr. Biggerstaff to get Ms. Nation to return to full-time hours at the dealership while Ms. Nation prolonged the work-at-home arrangement. During this time, the employer's auto insurance sales substantially decreased as Ms. Nation's hours worked at the dealership decreased to 15 per two-week pay period and then to six per two-week pay period. When Ms. Nation was at the dealership, her mother cared for her child. Ms. Nation's mother was unavailable to care for the child full-time due to the mother's full-time employment.

Ms. Nation's continued failure to resolve her childcare problem and continued absence from the workplace prompted Mr. Biggerstaff to travel to the Norwalk dealership at the end of December 2017 to meet with Ms. Nation. During the second half of 2017, insurance sales at the dealership had decreased by $150,000.00 in comparison to the first half of 2017. At the December meeting, Mr. Biggerstaff told Ms. Nation that she needed to spend at least 32 hours per week at the dealership. Ms. Nation insisted that she would need to bring her baby to work with her in order to meet that expectation. Mr. Biggerstaff gave Ms. Nation to the end of January to resolve her childcare situation and return to full-time hours at the dealership. Ms. Nation did not do that.

Ms. Nation's continued failure to resolve her childcare issues and return to full-time work at the dealership led to a telephone conference call with the employer on February 23, 2018. At that time, Alex Morton, Chief Financial Officer, introduced Jesse Sweet as the new Insurance Manager and Ms. Nation's new supervisor. During that conference call, the employer told Ms. Nation that effective March 1, 2018, she needed to return to working 40 hours per week at the auto dealership. Ms. Nation agreed that she would do that. The employer addressed Ms. Nation bringing her child to work and told her that was unacceptable.

Ms. Nation did not follow through on her agreement to secure full-time childcare or to report for full-time work at the dealership effective March 1, 2018. Between the February 23 meeting and the March 1, 2018 deadline to report for full-time work at the dealership, Ms. Nation asserted through email correspondence with Mr. Morton that the employer had given her too little time to secure childcare and further asserted that the employer had made insufficient arrangements for Ms. Nation to express breast milk at work. The employer had in fact made appropriate arrangements for a secure lactation room. Ms. Nation had had since November 2017 or earlier to resolve her childcare issues. In the email correspondence, Ms. Nation asserted that she could not report on March 1, but was not quitting the employment. Mr. Morton advised Ms. Nation that the employer would interpret her failure to report for full-time work at the dealership beginning March 1 as her resignation from the employment.

REASONING AND CONCLUSIONS OF LAW:

The weight of the evidence in the record establishes a discharge from the employment rather than a voluntary quit.

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *See Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 871-24.25.

The evidence establishes that Ms. Nation did not give notice of an intention to sever the employment relationship. On the contrary, she asserted she was not resigning from the employment. The employer severed the employment relationship based on Ms. Nation's continued refusal to return to the established conditions of the employment, which included full-time hours worked at the dealership.

Iowa Code section 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 disqualification shall continue 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 of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes a discharge based on insubordination. The employer reasonably expected Ms. Nation to work full-time at the auto dealership. The nature of Ms. Nation's position required that she work full-time at the auto dealership to take advance of insurance sales opportunities and to maximize insurance sales. The evidence establishes repeated reasonable requests from the employer that she resolve the issue and conduct on the part of Ms. Nation that communicated a repeated and unreasonable refusal to comply. Ms. Nation's refusal to return to full-time hours at the dealership, and her failure to take reasonable and timely steps to resolve her childcare issue over a period of three and a half months demonstrated an intentional and substantial disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Nation was discharged for misconduct. Accordingly, Ms. Nation is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Nation must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The March 30, 2018, reference 03, decision is amended as follows. The claimant was discharged on March 1, 2018 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs