

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICOLE WELLS
Claimant

VAR-MIL INC
Employer

APPEAL 21A-UI-12909-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
Claimant: Appellant (2)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On May 12, 2021, the claimant/appellant filed an appeal from the May 5, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant voluntarily quitting. The parties were properly notified about the hearing. A telephone hearing was held on July 15, 2021. Claimant personally participated at the hearing. Employer failed to register a phone number for the hearing so the administrative law judge could call them. As a result the employer did not participate at the hearing.

ISSUE:

Was the separation a discharge for job related misconduct that disqualifies the claimant from unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 12, 2018. Claimant last worked as a part-time shirt inspector. Claimant was separated from employment on January 5, 2021, when she was discharged by the employer.

On January 5, 2021, claimant went to work and was asked by the owner, Dennis Schmidt, to attend a meeting. Claimant went to the meeting and Mr. Schmidt accused claimant of stealing two suit jackets. Claimant denied stealing any suit jackets. Mr. Schmidt presented claimant a picture of a man that a co-worker told him the claimant knew. Claimant denied knowing the man and denied stealing any suit jackets. Mr. Schmidt did not have any other evidence linking the theft to the claimant. Mr. Schmidt immediately terminated the claimant for theft. The employer was not present at the hearing and did not present evidence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code section 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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.

Employer did not participate in the hearing and did not provide evidence as to the specific reason for the claimant's discharge. No misconduct has been established in this matter. The employer

has not met its burden of proof to disqualify the claimant from receiving unemployment benefits. Benefits are granted.

DECISION:

The May 5, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

July 26, 2021
Decision Dated and Mailed

cs/mh