

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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HART LEASING INC
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CEDAR RAPIDS IA 52406

Appeal Number: 05A-UI-01043-SWT
OC: 12/19/04 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the *Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.*

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 19, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 15, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Erin Pickart. Hal Hart participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as a car rental agent from May 13, 2002 to December 19, 2004. Linda Zeeb, the counter manager, was the claimant's immediate supervisor. Hal Hart is the owner of the business, and Karen Delaney is the office manager.

On December 15, 2004, Zeeb telephoned the claimant at home from the employer's telephone. Zeeb in an angry and loud tone of voice falsely accused the claimant of calling Zeeb's daughter

and aggravating her daughter's mental problems. This was one of a series of occasions when Zeeb had instigated a conflict with the claimant regarding matters outside of the workplace. The claimant was upset by Zeeb's phone call and the history of problems she had with Zeeb.

The claimant called Dulany and recounted the conversation she had with Zeeb. She told Dulany that she was fed up with Zeeb's conduct toward her. Dulany told the claimant that she did not know what could be done about Zeeb. The claimant asked Dulany, "So is the only way to stop this abuse to give two weeks notice?" Dulany responded that she really did not know. The claimant did not intend to quit her employment when she asked Dulany the question about stopping the abuse; she was expressing her frustration. Afterward, however, Dulany incorrectly reported to Hart that the claimant had given her two weeks notice.

Hart did not contact the claimant to find out what her intentions were or to address her concerns but instead acted on what Dulany had told him. He placed an advertisement for the claimant's job in the local newspaper.

On December 16, 2004, the claimant went to the office to pick up her paycheck from Dulany. She told Dulany that she had figured out how to deal with the situation with Zeeb. She said that if Zeeb would stop working after her scheduled hours and she screened her calls at home, she could minimize contact with Zeeb. Dulany told the claimant that she needed to call Hart because he thought that she was quitting. The claimant told Dulany that she was not quitting and that she would call Hart. Hart was not available when the claimant called; so the claimant left a message stating that if there was some misunderstanding, she wanted to make clear that she had no intention of quitting her job.

The claimant continued to work her scheduled shifts on December 16 and 19. On December 19, the claimant saw the ad in the paper. She contacted Dulany to find out whose job they were advertising, and Dulany insisted that she call Hart again. Later that day, the claimant spoke with Hart and he told her that it was her job that was being advertised. When the claimant asked why, Hart said it was because she had given her two-week notice to Dulany. The claimant again denied that she had told Dulany that she was quitting. Hart told the claimant that she did not need to work again and should return her keys and uniforms. He told her that she was done.

Hart terminated the claimant's employment because she had made a comment to Dulany about quitting.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The preponderance of the evidence establishes that the claimant never intended to quit or said she was quitting. The comment made to Dulany was clearly a rhetorical question not a definite statement that she was quitting. It is also clear that Hart was not interested in discovering what

the claimant wanted to do or in trying to address the claimant's concerns. Instead, he took Dulany's version of the conversation as a verbal resignation and would not allow the claimant to convince him otherwise. The separation must be treated as a discharge.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). No work-connected misconduct by the claimant has been proven in this case.

DECISION:

The unemployment insurance decision dated January 19, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account will be charged for benefits paid to the claimant.

saw/tjc