

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

TONYA R VAN DE GROENKAN
Claimant

APPEAL 22A-UI-14324-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

R H GRABAU CONSTRUCTION INC
Employer

**OC: 01/02/22
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Code § 96.5(1) – Voluntary Quit from Employment

STATEMENT OF THE CASE:

On June 23, 2022, claimant Tonya R. Van De Groenkan filed an appeal from the June 20, 2022 (reference 02) unemployment insurance decision that denied benefits based on a determination that claimant voluntarily quit her employment on April 11, 2022. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Wednesday, August 3, 2022. The claimant, Tonya R. Van De Groenkan, participated personally. Attorney Stuart L. Higgins represented the claimant. The employer, R H Grabau Construction, Inc., sent in written notice that it would not be participating in the hearing. Claimant's Exhibits 1 and 2 were received and admitted into the record.

ISSUE:

Did the claimant quit the employment without good cause attributable to the employer or was she discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for R H Grabau Construction, Inc., on June 19, 2019. She held the position of accountant throughout her employment. Claimant initially worked full-time hours for the employer. She requested to work part-time hours in June 2021, until September 3, 2021, due to a pandemic-related lack of childcare. Immediately upon her return to full-time work on September 6, 2021, claimant was reduced to part-time hours, which she worked until the end of her employment. Claimant's employment ended on April 11, 2022, when owner Kevin Porter discharged her.

After claimant arrived at work on April 11, Porter came into her office to speak with her. Claimant mentioned to him that she saw the employer had posted her position on Indeed, only the posting listed the job as a full-time position with benefits. Porter said he was glad she had seen the posting and told claimant, "I don't think you left me any choice." Over the course of the conversation, Porter revealed that he believed claimant had been plotting against him and the

company, so he had been working to replace her by holding interviews for her position at multiple points over the prior year and talking with the company's CPA about taking over the accounting duties. At one point, Porter told claimant he "[could] see where this is heading... and that is why we did what we did." (Exhibit 2, page 12) During another portion of the conversation, Porter acknowledge he was discharging claimant. After the claimant said that him terminating her "because of a master plan that never came from [her] and came from somebody as an outside source... that's wrongful termination," he responded, "Okay... that is part of the reason. There's other stuff. You wanna go into all the other stuff we can." (Exhibit 2, page 18)

Claimant had never received warnings from Porter, co-owner Eric Hammer, or anyone else with the employer. She had received conflicting instructions in her position: while Porter expected her to continue with marketing responsibilities, Hammer had instructed her to cease her marketing work as it was not cost-effective. Claimant was not given any notice that there were things she needed to improve upon in order to retain her job with the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Iowa Code §96.5(1) provides that an individual will be disqualified from receiving unemployment insurance benefits "[if] the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016).

A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Empl. Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Empl. Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Empl. Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Here, the evidence in the record demonstrates that claimant had no choice in the matter: Kevin Porter was ending her employment with R H Grabau Construction. Claimant never stated she was quitting or engaged in any actions that would lead a reasonable person to believe she wanted to end her employment. Rather, Kevin Porter repeatedly indicated that it was his choice and not hers that the employment relationship was over. Therefore, this matter will be examined as a discharge from employment.

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:

"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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). 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).

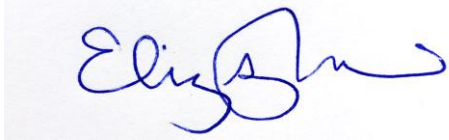
Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the 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...

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all, provided the discharge is not contrary to public policy. However, if the employer fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. Here, the employer did not appear for the hearing or submit any documentation in lieu of in-person testimony. Claimant's unrefuted testimony, supported by a transcript of her conversation with Porter, establishes that she was performing her job to the best of her ability while the employer was secretly working to replace her. Nothing about this scenario establishes disqualifying misconduct. The evidence in the record supports a finding that claimant was discharged for no disqualifying reason, and benefits must be allowed.

DECISION:

The June 20, 2022 (reference 02) unemployment insurance decision is reversed. Claimant did not quit. She 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.



Elizabeth A. Johnson
Administrative Law Judge

October 7, 2022
Decision Dated and Mailed

mh

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.