

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARY C CARSON
Claimant

GLOBAL SECURITY SERVICES IA LTD
Employer

APPEAL 16A-UI-07166-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/05/16
Claimant: Appellant (5)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 27, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on July 18, 2016. The claimant Mary Carson participated and testified. The employer Global Security Services IA LTD participated through president Brad Utter and vice president of electronic security Stephen Kirkman. Claimant's Exhibits A through D and employer's Exhibits 1 and 2 were received into evidence.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a procurement specialist from March 16, 2015, until this employment ended on June 6, 2016, when she was discharged.

On May 26, 2016, Utter called a meeting with claimant for the purposes of issuing a written warning for failure to follow his instructions regarding some changes to her job duties. Prior to Utter having informed claimant of the disciplinary warning, the discussion turned to several unrelated grievances claimant had with the employer. The discussion became heated. Claimant, feeling intimidated by Utter, got up and began to leave the meeting. Utter indicated he had not dismissed her from the meeting and she needed to sit back down so they could conclude the discussion. Claimant responded, "I'm dismissing you" and left the office.

Claimant's next scheduled work day was May 31, 2016. Late in the day on May 31 Utter sent an email to claimant informing her he wanted to meet with her at 4:45 to conclude their meeting from the previous week. Utter prepared a second disciplinary action to issue to claimant regarding the May 26 meeting. Claimant went by Utter's office at 4:45 and saw he was not

there. Claimant then proceeded to gather her belongings and left out the back door in order to avoid any further contact with Utter. Once she was outside claimant realized she had left her cell phone inside and asked Kirkman to go in and retrieve it for her so she would not have to see Utter. Kirkman testified this interaction occurred just before 5:00 p.m. Claimant is normally scheduled to work until 5:00 p.m., though she sometimes flexes her time.

It was not until the following day, June 1, that Utter learned claimant had left early in an attempt to avoid speaking with him. Utter was out of the office that day, but planned on speaking with claimant again on June 2. Before Utter had a chance to speak with claimant she left work due to illness. (Exhibit B). Claimant was absent from work due to illness again on June 3. Though claimant was absent on June 3, she and Utter had an email exchange in which she very clearly stated that she was not quitting her job. (Exhibit C). After speaking with his business partner, the decision was made to terminate claimant's employment for refusal to perform her duties as assigned and her repeated refusal to accept disciplinary action, most recently with her deliberate avoidance of Utter on May 31. (Exhibit 1). On June 6, 2016, when claimant came to work, she found a letter with a box of her belongings stating that her employment had been terminated. (Exhibit A).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit but was discharged from employment due to job-related misconduct.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). A voluntary leaving of employment 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 a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Here, the claimant very clearly communicated to the employer, on June 3, 2016, that she was not and did not intend to resign her employment.

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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).

Claimant failed to follow instructions regarding minor changes to her job duties, and then walked out of a disciplinary meeting to discuss this refusal prior to the discipline being issued or discussed. When the employer attempted to set up another meeting to discuss these issues, claimant left work early and used a different exit in order to avoid having to speak with Utter about the issue. Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980). Here, Utter could not even issue the disciplinary action due to claimant's considered attempts to avoid him. Utter's requests to meet with claimant were not unreasonable, but her avoidance of him is against commonly acceptable standards of behavior in the workplace. Claimant's conduct is insubordination. Benefits are denied.

DECISION:

The June 27, 2016, (reference 01) unemployment insurance decision is modified with no change in effect. The claimant did not quit but was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/pjs