

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIZABETH A ELLIS
Claimant

SHARPNESS INC
Employer

APPEAL 21A-UI-02229-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On December 23, 2020, the employer, Sharpness Inc., filed an appeal from the December 15, 2020, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing and waived notice on the issues of overpayment of benefits and employer participation in the fact-finding interview. A telephone hearing was held on February 16, 2021. Claimant, Elizabeth Ellis, participated and testified. Employer participated through its human resource manager, Shelly Dorman, operations manager, Nic Olhauser, and director of operations, Sam Reges. Employer's Exhibits 1 was received into evidence.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on February 21, 2020. Claimant last worked as a full-time as a team manager. Claimant separated from employment on September 28, 2020, when she resigned.

In August 2020, claimant logged onto her manager account using a salon iPad. The account contained information that managers were privy too, but that should not be shared with other employees. Claimant unknowingly remained logged onto the account for several days before anyone noticed. During this time, anyone from the salon could have accessed claimant's manager account. When the employer became aware of this, Olhauser spoke with claimant about the seriousness of the incident. Olhauser told claimant that if this ever happened again she might be demoted or even terminated.

In September 2020, claimant was going to be off work several days on vacation. Before she left for vacation, claimant forgot to lock a cabinet in the salon, which contained employee files. Upon her return, claimant learned of her mistake and that she was going to be demoted. At the time, claimant was earning \$15.50 per hour, plus tips. Her demotion was to include a pay cut somewhere between \$1.50 and \$2.00 per hour, removal of her management responsibilities, and a transfer to another salon. The salon claimant was to transfer to was only a few minutes further from her home, but had approximately half the number of customers. Claimant was concerned the decrease in customers would greatly reduce her income, as she relies heavily on tips. Based on this concern, claimant resigned, rather than accepting the demotion. (Exhibit 1).

The claimant filed a new claim for unemployment insurance benefits with an initial claim date of March 15, 2020 and an additional claim date of October 18, 2020. The claimant filed for and received a total of \$8,808.00 in unemployment insurance benefits for the weeks between October 18, 2020 and February 20, 2021. Both the employer and the claimant participated in a fact finding interview regarding the separation. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily resigned employment with good cause attributable to the employer.

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).

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

In general, a substantial pay reduction of 25 to 35 percent reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. EAB*, 433 N.W.2d 700 (Iowa 1988).

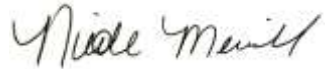
Here, claimant was demoted after she left a manager drawer unlocked after previously leaving her manager account logged into a store iPad. The conduct for which claimant was discharged was merely an isolated incident of poor judgment. While the two incidents were somewhat similar, both left confidential information open to employees, they were not similar enough to establish a pattern of misbehavior, the employer has only shown that claimant was negligent. "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability. Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). Ordinary negligence is all that is proven here.

The employer has not established that the demotion was related to any incident of misconduct, as is its burden. Inasmuch as the claimant would suffer reduction in pay and job responsibilities, as well as a requirement that she work at another salon, which saw approximately half the number of customers. Claimant relies heavily on tips for income and feared the reduction in customers would dramatically affect her take home pay. Together, these

changes of the original terms of hire is considered substantial. Thus the separation was with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible. As such, the issues of overpayment and participation are moot.

DECISION:

The December 15, 2020 (reference 01) decision is affirmed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible. The issues of overpayment and participation are moot.



Nicole Merrill
Administrative Law Judge

March 05, 2021
Decision Dated and Mailed

nm/ol