IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

JASON S ARNOLD
Claimant

ANNETT HOLDINGS INC
TMC TRANSPORTATION INC
Employer

APPEAL NO/ 09R-UI-18166-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 06/21/09
Claimant: Respondent (4)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Annett Holdings, Inc. / TMC Transportation, Inc. (employer) appealed a representative's July 16, 2009 decision (reference 01) that concluded Jason S. Arnold (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 13, 2010. The claimant participated in the hearing. Diane Elkins of TALX Employer Services appeared on the employer's behalf and presented testimony from two other witnesses, Todd Scales and Kenny Kyle. The administrative law judge takes official notice of the Agency wage records. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 1, 2006. He worked full-time as a driver in the employer's over-the-road trucking business. His last day of work was June 18, 2009. The employer discharged him on that date. The reason asserted for the discharge was being banned from two customers' sites because of a customer complaint regarding his conduct.

On June 17 the claimant was at a client's location in Ohio. He had just unloaded and was preparing to leave to his next destination. As he prepared, he was pulled over to the side on the road exiting the client's property, but inside the perimeter, prior to the guard shack. The guard came over to him and told him he needed to move. The claimant agreed that he would move, but still took a few more minutes in preparation, as he saw no other vehicles coming from behind that he might be blocking. After a few minutes the guard came back over to him and

began yelling at him to move his truck immediately. The claimant was startled and then immediately left, leaving so quickly that he forgot to stop and reweigh before leaving.

The client reported to the employer that the claimant had been belligerent and disrespectful, and had used rude or foul language and gestures toward the guard; as a result of this, the client informed the employer that the claimant was barred from returning to its properties. Further, a related client who had also been told of the claimant's alleged behavior also informed the employer that the claimant was also barred from returning to its properties.

The claimant denied using any rude or foul language or gestures at the client's facility, but admitted to forgetting to be reweighed before leaving because of being startled by the guard's conduct towards him. However, by the time he remembered he had not reweighed, he was off the property and down the road, so he concluded it would not be prudent to return.

The claimant suspected that he was being discharged at least in part because earlier in June he had informed the employer that he was going to be quitting to go back to school as of the end of August. The claimant established an unemployment insurance benefit year effective June 21, 2009, but ceased filing weekly claims as of the week ending July 18, 2009. His weekly benefit amount had been determined to be $361.00. Agency wage records indicate that since the separation and by September 30, 2009 the claimant has earned more than $3,610.00 in other covered employment.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit, he would be disqualified unless it was for good cause attributable to the employer; if the employer discharged the claimant, he would be disqualified only if it was for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The claimant did express his intent not to continue to work with the employer as of the start of school in August. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit. The claimant would be disqualified for unemployment insurance benefits as of the date of his intended quit, which the administrative law judge deems to be the week beginning August 23, 2009 unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code §96.6-2. Quitting employment in order to attend school is not a reason attributable to the employer. 871 IAC 24.25(26). The claimant has not satisfied that burden. Benefits would be denied effective August 23, 2009 until such time as the claimant had earned ten times his weekly benefit amount in other covered employment. The administrative law judge further concludes from wage information contained in the Agency records that the claimant has requalified for benefits since the separation from this employer. Accordingly, provided the claimant is otherwise eligible, as of October 1, 2009 benefits would be allowed and the account of the employer will not be charged.

The next issue in this case is whether, for the time prior to the effective date of the claimant's quit, the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was

right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his alleged behavior while on a client's property, leading to the claimant being barred from two clients' properties. Assessing the credibility of the witnesses and the reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact used rude or foul language or gestures toward anyone or that he was otherwise belligerent or disrespectful. Under the circumstances of this case, the claimant's brief delay in leaving the premises and his subsequent forgetting to reweigh was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good-faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits prior to the date of his intended quit.

DECISION:

The representative's July 16, 2009 decision (reference 01) is modified in favor of the employer. The claimant resigned his employment without good cause attributable to the employer as of August 23, 2009, but has requalified for benefits since the intended date of that separation. The employer did discharge the claimant prior to the intended date of his resignation, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits from June 21, 2009 until July 18, 2009, if he was otherwise eligible. The employer is chargeable for any benefits paid for that period. As of October 1, 2009, benefits again would be

allowed, provided the claimant is otherwise eligible, but the employer's account is not chargeable for any benefits payable after that date.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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