

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MATTHEW K JOHNSON**  
Claimant

**THOR MANUFACTURING INC**  
Employer

**APPEAL 16A-UI-07372-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/05/16**  
**Claimant: Appellant (2)**

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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 30, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that voluntarily left his employment without good cause to the employer. The parties were properly notified of the hearing. A telephone hearing was held on July 22, 2016. The claimant, Matthew K. Johnson, participated. The employer, Thor Manufacturing, Inc., participated through Merlin Bishop, office manager.

**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 an assembler and welder from January 1, 2013, until this employment ended on June 7, 2016, when he was discharged.

Claimant's last day of work was a slow day. Claimant took one of the employer's trucks out to have the oil changed, as he had done in the past. When he returned, Owner Vince Rottinghaus was being loud and pointing out some things the employees should have done. When claimant explained why he did what he did, Rottinghaus began focusing his anger on claimant. Rottinghaus pushed claimant on the shoulder, shoving him toward the shoulder, and told him to leave and go home.

As claimant was attempting to follow the instruction and exit the building, Rottinghaus tried to block claimant in the break room. Claimant told Rottinghaus multiple times that he needed to calm down and stated that he would talk to Rottinghaus once Rottinghaus was calmer. Rottinghaus followed claimant out to the parking lot and told him to come back to work. Rottinghaus was still upset, and claimant responded that he would talk to Rottinghaus once he had calmed down. Rottinghaus told claimant not to get into his care or he would be fired, and

claimant got into his car and went home. The employer never called claimant back after this day.

Claimant tried to call in twice the next morning and the following morning, and the phone went straight to voicemail. Bishop verified that the number claimant called was no longer in service or was not in the office that day. The employer was in the process of changing vendors for the cell phones, which was affecting which phones had active service and were receiving calls around this time. Claimant does not believe his job was in jeopardy prior to this incident with Rottinghaus. Claimant testified that on two prior occasions, Rottinghaus has become angry with him and sent him home. On both of the previous occasions, Rottinghaus called him back and apologized, and claimant returned to work.

### **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.

Iowa Code §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, claimant had no intent to end his employment on his final day of work. He left work only after being instructed to leave by Rottinghaus. Claimant verbalized multiple times that he planned to talk to Rottinghaus once Rottinghaus had calmed down. Additionally, claimant attempted to reach the employer the following day to discuss the situation and resume working. Therefore, this case will be analyzed as a discharge from employment, and the burden falls to the employer.

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.

## REFERENCE CODE 15

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).

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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

In this case, claimant left work upon the instruction of Rottinghaus. Claimant credibly testified that Rottinghaus was prone to angry outbursts at work, and he had sent claimant home several times in the past only to call him back to work the following day. Additionally, on this final day of work, Rottinghaus grabbed claimant's shoulder and pushed him. An employer cannot engage in this type of hostile physical contact and then expect an employee to follow its instruction to remain working. This instruction to return to work was not reasonable under the circumstances, and claimant's refusal to follow it does not amount to insubordination or disqualifying misconduct. Benefits are allowed.

**DECISION:**

The June 30, 2016, (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits withheld shall be paid to claimant.

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Elizabeth Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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