

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES K HURLESS**

Claimant

**APPEAL NO: 14A-UI-04203-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**U S SECURITY ASSOCIATES INC**

Employer

**OC: 03/30/14**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

James K. Hurless (claimant) appealed a representative's April 21, 2014 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from U. S. Security Associates, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 27, 2014. The claimant participated in the hearing and presented testimony from one other witness, Carolyn Hurless. Robert Collins appeared on the employer's behalf and presented testimony from one other witness, Vinton Kono. 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?

**OUTCOME:**

Reversed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on December 3, 2012. He worked full time (32 hours per week) as a security officer at the employer's Des Moines, Iowa business client's location. His last day of work was an overnight shift that ended on the morning of March 21. He was next scheduled to work a daytime shift on March 22 to start at about 6:00 a.m.

The claimant's wife has an underlying chronic medical condition which occasionally becomes acute and requires emergency medical intervention. On the morning of March 22 her condition did become acute and he took her to the hospital. He therefore did not report for his shift that day. At about 8:00 a.m. he called his supervisor, Kono, to report that he was absent because he had taken his wife to the hospital. Kono told the claimant, "If you don't come in, you're filed."

Ms. Hurless was close enough to the phone to also hear Kono make this statement. The claimant determined that it was not possible for him to leave his wife at the hospital and report for work, so he reasonably concluded that he was fired. However, Kono did not actually have authority to discharge any employee. On March 24 Kono reported to the branch manager, Collins, that the claimant had called him back on March 23 and had told him that he was going to resign because his wife was going to need full time medical care. However, the claimant's wife does not require full time medical care. The claimant did not speak to Kono after March 22 when he understood that Kono was discharging him.

## **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he voluntarily quit. Assessing the credibility of the witnesses and 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 voluntarily quit, as compared to reasonably believing that he had been discharged. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code §96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. Rule 871 IAC 24.26(21).

The issue in this case is then whether 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 which was a material breach of the duties and obligations owed by the employee to the employer. Rule 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 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. Rule 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. Rule 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 the employer effectively discharged the claimant was his absence from work on March 22. Excessive unexcused absences can constitute misconduct. *Cosper*, supra; *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984); Rule 871 IAC 24.32(7). The absence on March 22 would be treated as excused, and there has not been a showing of excessive unexcused absences. 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.

**DECISION:**

The representative's April 21, 2014 decision (reference 01) is reversed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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