

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY EISCHEN
Claimant

APPEAL NO. 14A-UI-10959-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAUKEE COMMUNITY SCHOOL DISTRICT
Employer

OC: 09/21/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Timothy Eischen filed a timely appeal from a representative's decision dated October 13, 2014, reference 01, which denied unemployment insurance benefits finding that the claimant voluntarily quit work after being reprimanded by his employer. After due notice was provided, a telephone hearing was held on November 10, 2014. The claimant participated. Participating on behalf of the claimant was his attorney, Ms. Christy Hickman. The employer, although notified, did not respond to the notice of hearing and did not participate.

ISSUE:

The issue in this matter is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Timothy Eischen was employed by Waukee Community School District from August 2001 until August 12, 2014 when he was given the option of resigning in lieu of being discharged. Mr. Eischen was employed as a full-time social studies teacher and football coach and was paid by salary. The claimant's immediate supervisor was the school principal.

On August 12, 2014, Mr. Eischen was given the option of resigning in lieu of being terminated by the school district because Mr. Eischen had been charged with a criminal offense. Although Mr. Eischen had pled not guilty to the criminal charges against him, he believed based upon the information that had been given to him at that time that his discharge was imminent and therefore resigned to protect his employment history.

At the time of hearing, the criminal charges against Mr. Eischen have not yet been adjudicated and Mr. Eischen continues to plead not guilty to the criminal charges.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant at the time of separation, sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

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 Admin. Code r. 871-24.26(21) 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:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

In this matter the evidence establishes that Mr. Eischen was compelled to resign on August 12, 2014 when given the choice of resigning or being discharged by the employer. There being no evidence to the contrary, the administrative law judge concludes that the claimant did not

voluntarily leave his employment but did so in lieu of being discharged. The question then becomes whether the evidence in the record establishes misconduct at the time of separation sufficient to warrant the denial of unemployment insurance benefits. It does not.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

An employer may discharge an employee for any number of reasons, or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. In the case at hand, the claimant was separated from his employment with the Waukee Community School District because the claimant was charged with a criminal offense. At the time of hearing in this matter, there has been no adjudication of the criminal charges against Mr. Eischen and the claimant continues to plead not guilty to the criminal charges.

The claimant's separation from employment that was initiated by the school district is inextricably tied to the criminal charges and the determination of whether the claimant engaged in misconduct in connection with his work cannot be established until such time as Mr. Eischen may be found guilty of the criminal charges against him.

Because the claimant's guilt or innocence had not been established at the time of job separation, the administrative law judge concludes that the evidence in the record does not establish misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits, at this time. The employer is not without recourse, however.

Section 96.5(2)(c), the gross misconduct provision of the Employment Security Act, provides that if a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment and the claimant has been duly convicted of the offence or has signed a statement admitting the commission of the act, the determination regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits that have been paid to the claimant prior to the determination that the claimant lost employment as the result of an indictable act shall not be considered to have been accepted by the claimant in good faith.

DECISION:

The representative's decision dated October 13, 2014, reference 01, is reversed. The claimant was discharged by the employer. At the time of the discharge misconduct sufficient to warrant the denial of unemployment insurance benefits has not been established. Benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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