

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICAH A DUSHANE**  
Claimant

**MID IOWA REFRIGERATION INC**  
Employer

**APPEAL 22A-UI-04945-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 01/02/22**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
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:**

Employer filed an appeal from the February 10, 2022 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was scheduled for April 1, 2022. Claimant participated. Employer participated through Bobbie White, Human Resources Director, and Jennifer Nordhues, Office Manager. The hearing was rescheduled to allow employer to submit its proposed exhibits to the Appeals Bureau. The hearing was rescheduled for April 19, 2022. The parties were properly notified of the hearing. Claimant participated. White and Nordhues participated on behalf of employer. Employer's Exhibit 1 (pages 1 through 28) was admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.  
Whether claimant was overpaid benefits.  
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed as a full-time Service Technician from October 8, 2007 until his employment with Mid Iowa Refrigeration ended on July 28, 2021. Claimant worked Monday through Friday from 8:00 a.m. until 4:30 p.m. and on-call one week every two months. Claimant's direct supervisor was Jarod Skau, Service Manager.

On or about July 21, 2021, claimant asked owner for time off from work to deal with personal issues. Claimant was on-call that week; owner asked claimant if he could wait until he was off-

call to take time off. Claimant responded that he could. Claimant was off-call Friday, July 23, 2021, so he began his leave of absence.

On Tuesday, July 27, 2021, owner called claimant about his absence. Owner told claimant that the parties agreed claimant would not take time off until owner got back from his vacation. Claimant explained that was not his understanding of their conversation and that he believed owner asked him to wait to take leave until he was no longer on-call. Owner told claimant to come to work the next day so they could speak to the dispatcher and schedule claimant's leave. Claimant and owner had no further discussions about claimant's request for a leave of absence.

On July 28, 2021, claimant reported to work and completed his first job. Claimant looked at his work schedule and saw new jobs had been added. Claimant asked the dispatcher whether owner told her not to schedule additional work for claimant. The dispatcher told claimant that she had not received that instruction from the owner. While at lunch, claimant received a call from owner. Owner was argumentative and began yelling and using profanity. Claimant told owner that he did not have to listen to him speak like that and hung up. Owner texted claimant to "bring [his] shit in now."

Skau called claimant and told him to turn in his work van, company phone and company computer; these items comprise all the company property in claimant's possession. Claimant returned the van and computer by 3:00 p.m. that day. Claimant did not return the phone at that time because he did not have a personal phone. Within minutes, Skau told claimant that he needed to return the company phone immediately; Skau also said that if claimant did not return the phone by the end of the day, employer would consider it stolen property and pursue legal action. Claimant returned the company phone by giving it to another technician that day.

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

For the reasons that follow, the administrative law judge concludes:

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code §§ 96.5(1). 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 there is no expressed intention or act to sever the employment relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, claimant had no intention of terminating employment with Mid Iowa Refrigeration. Because claimant did not voluntarily quit, claimant's separation from employment must be analyzed as a discharge.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find claimant's testimony regarding his conversations with owner and Skau on July 28, 2021 to be more credible than employer's testimony, because claimant provided firsthand information. Claimant was a party to those conversations and provided detailed information about what was said. Furthermore, I find employer's testimony that claimant was on a voluntary leave of absence beginning July 28, 2021 to lack credibility, because employer had no additional communication with claimant about the leave of absence on July 28, 2021 and provided no official documentation of the leave of absence. Claimant's interpretation of the July 28, 2021 conversations as a discharge is reasonable; employer's interpretation of those conversations as finalizing a leave of absence is not reasonable.

Employer has produced no evidence of misconduct by claimant. Employer has not met its burden of proving disqualifying job-related misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Because claimant's separation is not disqualifying, the issues of overpayment, repayment and charges are moot.

**DECISION:**

The February 10, 2022 (reference 01) unemployment insurance decision is affirmed. claimant did not quit but was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible. The issues of overpayment, repayment and charges are moot.



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April 28, 2022  
Decision Dated and Mailed

acw/acw