IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

STEVEN J RASMUSSEN Claimant **S & B FEEDYARD INC** Employer	**APPEAL 21A-UI-06643-ML-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/11/20** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 16, 2021, (reference 01) unemployment insurance decision that determined he was not eligible to receive unemployment insurance benefits. The parties were properly notified of the hearing. A telephone hearing was held on April 26, 2021. The claimant, Steven Rasmussen, participated personally. Claimant's father, Steven Rasmussen, also provided testimony on behalf of claimant. The employer, S & B Feedyard, Inc., participated through Brian Bentley.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a farmhand. He began working for the employer on November 11, 2019, and his employment ended on September 27, 2020. His immediate supervisors were Brock Bentley and Brian Bentley.

At approximately 4:00 a.m. on the morning of September 28, 2020, claimant received a text message from Brian Bentley, providing claimant needed to take a vacation and that the employer would call him when they needed him. Claimant testified that prior to receiving this text message, he had every intention of presenting to work on September 28, 2020. At approximately 8:00 a.m., claimant called Brian Bentley to follow up on the text message. The conversation was short due to the fact Mr. Bentley was working in the combine. According to claimant, Mr. Bentley told him that he was making things complicated and abruptly ended the call. Claimant would later testify that Mr. Bentley told claimant that he was tired of the chaos.

Mr. Bentley testified claimant was asked to take time off because of some turmoil that had been occurring between the farmhands. According to Mr. Bentley, claimant and Matt Vogel were

"butting heads" and talking behind one another's back. Mr. Bentley further testified to a general lack of teamwork amongst the farmhands.

Claimant considered the September 28, 2020, communications to be a notice of discharge for at least two reasons. First, the employer was in the middle of harvest season. Claimant considered it unusual that he would be asked to take time off in the middle of one of the employer's busiest periods. Second, claimant testified he was not eligible to take vacation as he had not yet been an employee for an entire year. Claimant did not tender a verbal or written resignation. The employer did not contact claimant to tell him when he was able to come back into work.

The employer asserts that claimant abandoned his employment by not contacting the employer after his week of vacation had ended. Mr. Bentley largely confirmed claimant's testimony regarding their communications on September 28, 2020. Mr. Bentley confirmed that he told claimant he would call him when they needed him. Despite confirming that he told claimant he would contact him when they needed him, Mr. Bentley determined that claimant did not care about his employment when claimant did not call him back to ask why the employer was giving him a few days off.

REASONING AND CONCLUSIONS OF LAW:

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

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.

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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:

> 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).

First, it must be determined whether claimant quit or was discharged from employment. 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). 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).

The decision in this case rests, at least in part, upon the credibility of the parties. The issue must be resolved by an examination of witness credibility and burden of proof. It is the duty of the administrative law judge as the trier of fact in this case, 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 believable evidence; 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*. Further, since most members of management are considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee, it is reasonably implied that the ability to communicate clearly is extended to discussions about employment status. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds that the claimant's version of events is more credible and consistent than that of the employer.

In the matter at hand, it is clear that claimant had no intention to quit. Further, there was not an overt act of carrying out any intention to quit by claimant. Claimant's action, or inaction, is not an overt act of carrying out any intention to quit. This is particularly true given that the employer expressly told claimant it would contact him when they needed him back at work. This put the onus on the employer to reach back out to claimant to bring him back to work. There is no

evidence the employer established a timeline for when claimant could come back to work during the initial communications. There is no evidence the employer reached out to claimant and provided him with a return to work date after the September 28, 2020, communication.

The facts of this case reveal claimant was discharged. The employer made it clear that they would contact claimant when they needed him. Claimant understood this communication to be a notice of discharge. His assumption was bolstered by the fact the employer did not contact him for any additional work.

Because claimant was discharged from employment, the burden of proof falls to the employer to establish that claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(4) provides:

> (4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

It is not clear exactly why the defendant terminated claimant's employment; however, it is apparent it was not for a current act of misconduct. A claimant cannot be discharged for a past act of misconduct. The employer provided little to no information regarding claimant's misconduct. It is possible claimant was terminated for butting heads with one of his co-workers; however, no specific instances were discussed by the employer at hearing. It is also possible claimant was terminated because the employer believed he was indifferent towards his

employment status. Either way, claimant's actions do not rise to the level of misconduct that would disqualify him from receiving unemployment insurance benefits.

Iowa Admin. Code r. 871-24.32(8) provides:

> (8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The purpose of this rule is to assure that an employer does not save up acts of misconduct and spring them on an employee when an independent desire to terminate arises. For example, an employer may not convert a lay off into a termination for misconduct by relying on past acts. *Milligan v. EAB*, 802 N.W.2d 238 (Table)(Iowa App. June 15, 2011).

The employer has failed to meet its burden of proof in establishing a current act of disqualifying job-related misconduct. As such, benefits are allowed.

DECISION:

The February 16, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Michael J. Lunn
Administrative Law Judge
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May 28, 2021
Decision Dated and Mailed

mjl/scn