

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN T COLLUM
Claimant

MENARD INC
Employer

APPEAL 19A-UI-09343-CL

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/27/19
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

On November 26, 2019, the claimant filed an appeal from the November 21, 2019, (reference 02) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A hearing was held in Cedar Rapids, Iowa, on January 28, 2020. Claimant participated. Employer participated through assistant manager Chuck Dohnel and assistant manager Harold Critchlow and was represented by attorney Paul Hammell, who appeared by telephone. Employer's Exhibit 1 was received.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge 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 began working for employer on July 16, 2019. Claimant last worked as a full-time hardware first assistant manager. Claimant was separated from employment on October 29, 2019, when he was discharged during his resignation notice period.

Claimant had a personality conflict with a long-time employee who was his subordinate. Claimant also had issues with the employees below him being insubordinate in general.

Claimant often asked assistant managers Chuck Dohnel and Harold Critchlow for help and advice with the issue. At one point, the managers assisted claimant in giving the employee a written warning.

The assistant managers also advised claimant to make a to-do list for the long-time employee who was giving him trouble. They told claimant they would back him up if he did so.

Claimant made a to-do list for the long-time employee. The long-time employee did not complete the to-do list to claimant's satisfaction.

On October 25, 2019, assistant manager Chuck Dohnel had a conversation with claimant about the employee not performing the to-do list to claimant's satisfaction. Dohnel disagreed that the employee was not performing her tasks. Dohnel also brought up that he had received several complaints in the previous two weeks from claimant's subordinates. The subordinates did not like claimant's management style. Claimant disagreed with the assessment and felt his subordinates should adjust to him.

Claimant was aware the store was getting a new general manager the next week and was hopeful he would get more support at that time.

However, instead of waiting to meet the new general manager, claimant submitted his resignation notice on October 27, 2019. He listed his last day of work as November 10, 2019. Claimant believed he could retract the notice if he ended up liking the new general manager. At worst, claimant thought he would work out the notice period and transfer to another store.

On October 28, 2019, the long-time employee complained to Dohnel that claimant told her to stop twirling her hair and she thought the remark was sexist. Dohnel spoke to five or six other female employees on the team, who also reported feeling claimant was sexist and racist.

On October 29, 2019, Dohnel presented claimant with a written warning stating that his team felt he was racist and sexist and that he had to learn to be respectful of all personalities. Claimant had difficulty reading the warning and disagreed with the warning. Claimant refused to sign the warning. Dohnel never told claimant doing so would result in his termination. Claimant became upset while voicing his disagreement and raised his voice beyond a professional level. Dohnel told claimant they were letting him go immediately.

Claimant had not been previously disciplined for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer, but was discharged for no disqualifying reason prior to the intended resignation date.

Iowa Code section 96.5(1) provides:

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

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).

Iowa Admin. Code r. 871-24.25(38) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

In this case, claimant has not established he resigned for a good cause reason attributable to employer. Claimant had a personality conflict with and difficulty managing a subordinate employee. Claimant was frustrated with the guidance he was getting from the managers above him. However, claimant had not yet gone to the human resource department and was aware of

and hopeful about the store getting a new general manager the next week. A reasonable person in claimant's position would have waited for the new general manager to start before submitting a resignation notice. Claimant did not establish the situation was intolerable.

Claimant failed to establish he resigned for a good cause reason attributable to employer. Therefore, benefits are denied as of his resignation date—November 10, 2019. However, benefits are allowed up until that point.

Employer discharged claimant during his notice period because he raised his voice and employer felt he was disrespectful during a meeting where he was being disciplined. Claimant did not agree with the discipline, and it was coming as a result of a complaint made by the very same employee with whom he was struggling and had asked for help. Claimant had never been previously disciplined for raising his voice or being disrespectful to a manager. His actions were not so egregious during the meeting that they rose to the level of deliberate disregard of employer's interests. Employer failed to establish it ended claimant's employment early due to misconduct.

In summary, benefits are allowed until November 10, 2019, and are denied thereafter.

DECISION:

The November 21, 2019, (reference 02) unemployment insurance decision is modified in favor of claimant. The claimant resigned without good cause attributable to employer, but was discharged from employment for no disqualifying reason prior to the end of the resignation notice period. Benefits are allowed until November 10, 2019, provided claimant is otherwise eligible. Benefits are denied after November 10, 2019, and until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



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January 29, 2020
Decision Dated and Mailed

cal/scn