

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN E KRESSLEY
Claimant

APPEAL NO: 07A-UI-02773-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMEGA CABINETS LTD
Employer

**OC: 02/04/07 R: 03
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 9, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on April 4, 2007. Claimant participated. Employer participated through Amy Victor and Mike Wood.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time machine operator from February 23, 1990 until Sunday, February 4, 2007. Claimant called employer in advance to give notice he was going to be an hour tardy because his father was in the hospital in a diabetic coma. When he arrived at work (because he knew he had a limited amount of leave time) Wood told him he would have to work in a different job for the night. Claimant said he wanted to work in his regular area and then told Wood he needed to leave to be with his father. Wood told claimant he did not care about his excuses and to either work in the other job or if he left it would be considered job abandonment. No one was available in the human resources department because they do not work on Sunday. Claimant felt forced into a decision and told Wood he would have to quit. Wood did not offer Family Medical Leave Act (FMLA) time off even though he thought claimant's behavior was unusual and knew the reason he wanted to leave for the evening. Claimant did not know he could use FMLA leave for anyone other than himself.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

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 § 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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).

Woods' overreaction to claimant's desire to work in his regular job or go visit his father in the hospital placed claimant in an untenable position when he was clearly not in a mental state to be able to make such a decision about the ultimatum, especially without knowing the full extent of FMLA leave availability. Even Wood acknowledged he knew claimant's father was in the hospital and that claimant's behavior was unusual. Thus, the separation was a forced resignation, which is considered a discharge.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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."

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, employer incurs potential liability for unemployment insurance benefits related to that separation. One isolated unexcused absence (leaving without permission) under the circumstances, without more, is not misconduct. Benefits are allowed.

DECISION:

The March 9, 2007, reference 01, decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs