

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTOPHER R MASON
Claimant

APPEAL 16A-UI-05873-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

**OC: 04/24/16
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 19, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit employment when he failed to notify the temporary employment firm within three working days of the completion of his last work assignment. The parties were properly notified of the hearing. A telephone hearing was held on June 13, 2016. The claimant, Christopher Mason, participated. The employer, Labor Ready Midwest, Inc., participated through Julia Topp, customer service representative recruiter. Claimant's Exhibit A and Employer's Exhibits 1 through 4 were received and admitted into the record without objection.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the 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 was employed full time as a laborer from July 23, 2015, until this employment ended on January 30, 2016, when he was discharged.

Claimant's last temporary assignment was with Heart of America. Up until his last several weeks at Heart of America, his on-site supervisor was Larry Vaughn. Two or three weeks before claimant's employment ended, Vaughn had a heart attack and Waggoner took over as the on-site supervisor. Topp reached out to Waggoner to see if he needed any assistance and to try and locate two missing weekly timecards for claimant.

Topp and Waggoner met on January 30, 2016. During this meeting, Topp and Waggoner discovered discrepancies in claimant's timecards. Claimant had submitted photos of his last weekly timecard to Topp (Exhibits C and D) that showed more hours than Waggoner's notes and timecard for Topp showed. (Exhibits A and B) Topp texted claimant and asked him to

come into the office and meet with her about these timecard discrepancies. Claimant asked why he needed to meet with her and told her that he wanted his money. Claimant also told Topp not to pay attention to the hours Waggoner said he worked, as claimant and Vaughn had a verbal agreement about his hours and pay. Topp asked him again to come in and give a statement so she could work with Heart of America to try and resolve this issue. Claimant again refused to come in and meet with Topp. Topp testified that claimant's participation in her inquiry into the timecards was vital, as claimant's explanation of the verbal agreement could not be acquired from anyone else. Topp could not confirm this agreement with Vaughn, as he was in the hospital and unconscious.

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 disqualifying misconduct. Benefits are withheld.

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.

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); see also Iowa Admin. Code r. 871-24.25(35). 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). There is no evidence in the record indicating claimant intended to leave his employment. Rather, the uncontroverted testimony shows the employer, not claimant, ended the employment. Therefore, this case will be analyzed as a discharge and the employer has the burden of proof in showing disqualifying misconduct.

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.

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).

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.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer provided more credible testimony than claimant. Claimant's testimony was inconsistent, and he contradicted himself multiple times. Most notably, claimant denied having the text message conversation with Topp on his final day of work and denied that she asked him to come into the office, but later admitted she asked him to come in and testified about the contents of the text conversation itself. In contrast, Topp's testimony was consistent.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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).

Claimant refused to go in and meet with Topp to clarify the timecard issue. He would not comply with her reasonable instruction to meet with him and explain the agreement he had with Vaughn and the discrepancies between the timecard photos he submitted to her earlier in the week and Waggoner's notes and copy of the timecard. The employer has shown claimant was discharged for disqualifying misconduct. Benefits are withheld.

DECISION:

The May 19, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he is deemed to be eligible.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/pjs