IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RICHARD J YENTER
Claimant

CORALVILLE EXTENDED STAY LLC
Employer

APPEAL NO: 12A-UI-03366-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/29/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Richard J. Yenter (claimant) appealed a representative's March 28, 2012 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Coralville Extended Stay, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 17, 2012. The claimant participated in the hearing, was represented by Erin Dooley, attorney at law, and presented testimony from one other witness, Tracy Torp. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on September 14, 2011. He worked part time (20-30 hours per week) as a housekeeper at the employer's hotel. He normally worked Tuesdays, Wednesdays, and Thursdays from about 8:30 a.m. until done. His last day of work was January 26, 2012, a Thursday.

As the employer did not always have enough rooms to be cleaned to need all of the housekeeping staff, it was the claimant's practice to call in each morning he was scheduled to learn if he would be needed that day, or if he would just be sent home when he arrived because

there was not enough work. He was next scheduled to work on Tuesday, January 31, and he called in that morning between 6:30 a.m. and 7:00 a.m. He was told by the front desk attendant that he was not to report back to work until after he had spoken to his direct supervisor. The claimant made multiple attempts on that day to reach his direct supervisor both by leaving messages on her personal cell phone and by leaving messages on her voice mail at the hotel, but she did not return his calls. He called again on the morning of February 1 between 6:30 a.m. and 7:00 a.m., and again another front desk attendant confirmed to him that he was not to report back to work until after he had spoken to his direct supervisor. The claimant again made multiple attempts on that day to reach his direct supervisor both by leaving messages on her personal cell phone and by leaving messages on her voice mail at the hotel, but she did not return his calls. The same scenario played out once more on January 2. He went into the hotel on January 3, but none of the supervisors who might have been able to address his status were available. He did turn in a uniform which was too small that day, but kept several others, believing he would be returning to work. However, his direct supervisor never responded to the claimant's messages, and he ultimately concluded that he had been released from the employment.

While the claimant had been given a first level warning on January 26 regarding a job performance issue, he had not been advised that his job was in any immediate jeopardy. Rather, at that time he had been told he was still to report for work on January 31.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The representative's decision, possibly based on information provided by the employer for the fact-finding interview which was not presented during the appeal hearing, concluded that the claimant was not discharged but that he voluntarily quit. No evidence was presented during the appeal hearing to suggest that the claimant voluntarily quit; his testimony was clear in that he had no intention to quit and took no action to quit. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code §96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct.

Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was apparently either the lack of work or a dissatisfaction with the claimant's job performance. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra. There is no evidence the claimant intentionally failed to perform his duties to the best of his abilities. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's March 28, 2012 decision (reference 03) is reversed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs