

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFFREY P KOSTER
Claimant

MANSON AG SERVICES INC
Employer

APPEAL 15A-UI-07190-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/15
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 June 15, 2015, (reference 01) unemployment insurance decision that denied benefits based on a voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on July 22, 2015. Claimant participated. Employer participated through Owner/President Mark Calmer and Owner/Vice President Ron Hokinson.

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 was employed full-time as a general laborer from September 2012, and was separated from employment on May 29, 2015, when he was terminated. Driving equipment was an essential function of claimant's job.

On May 10, 2015, claimant lost his Commercial Driver's License (CDL) due to being arrested for and eventually convicted of Operating While Intoxicated (OWI). Claimant was off-duty when he engaged in the conduct leading to his arrest. Claimant reported the charge to Owner/President Mark Calmer and Owner/Vice President Ron Hokinson almost immediately. Claimant suggested that he resign as his job duties involved driving equipment. Calmer told claimant to wait until he spoke with employer's insurance company. About one week later, employer's insurance company confirmed it would not insure claimant to drive any of employer's equipment for five years. Calmer relayed the information to claimant, but graciously allowed him to continue working for employer until May 29 while he looked for another job. While during conversations with employer claimant agreed the work he would be able to do was limited after being charged with and convicted of OWI, he did not intend to resign his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

In this case, the parties dispute whether claimant resigned or was terminated. 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). Here, claimant alleges he did not intend to end the employment relationship. Thus, claimant was terminated. Regardless of the manner in which claimant's employment ended, though, he is disqualified from receiving benefits. The ending of his employment was not for good reason attributable to his employer and was for his own misconduct.

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).

The employer is not obligated to accommodate an employee during a license suspension or revocation period but does have a legal obligation to abide by state and federal transportation safety statutes and regulations and not allow unlicensed individuals to drive. Repeated traffic violations rendering a claimant uninsurable can constitute job misconduct even if the traffic citations were received on the claimant's own time and in his own vehicle. *Cook v. Iowa Dep't of Job Serv.*, 299 N.W.2d 698 (Iowa 1980). While the license revocation and insurance coverage issue was not related to his work, claimant's failure to maintain a valid, unrestricted driver's license and be insurable as a known condition of the employment was misconduct sufficient to warrant a denial of benefits.

DECISION:

The June 15, 2015, (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 has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/mak