

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**AARON R SHUMAKER**  
Claimant

**MAX-CAST INC**  
Employer

**APPEAL 18A-UI-01556-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/31/17**  
**Claimant: Appellant (2R)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 30, 2018, (reference 01) unemployment insurance decision that denied benefits based on his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on February 27, 2018. The claimant participated and testified. The employer participated through President Stephen Maxon. Claimant's Exhibit A was received into evidence. Official notice was taken of the administrative record.

**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 part time as a laborer from February 29, 2016, until this employment ended on January 5, 2018.

The last day claimant worked was December 21, 2017. Claimant testified he was off work on vacation from December 22 through 27, 2017. The employer could not confirm those dates, as it explained this information was written on a board that was accidentally erased during the time in question. On December 27, 2017, claimant contacted Maxon to see if there was work to do, as he was waiting on several parts to arrive when he last worked. Maxon told claimant he did not have work available. Maxon testified, he assumed claimant was referring to any new large projects that had come in and what he meant by his response was that there were no new large projects that had come in. Maxon further testified he assumed claimant knew, even when there was not paying (customer) work to be completed, there is always work that can be done around the employer's facility. Neither assumption was communicated to claimant on December 27, 2017. Claimant, hearing there was no work available, asked Maxon to call him if any work became available and left. When claimant did not hear back from Maxon by the following week, he filed his claim for benefits, under the understanding that he was temporarily laid off due to lack of work.

Maxon admitted he did not call claimant to return to work and assumed claimant would return on his own. Maxon further testified another employee told him he had tried to contact claimant

about an unrelated issue and the person who answered indicated he had the wrong number. Maxon read off the telephone number he had for claimant, which claimant confirmed was his number. Claimant testified he did not receive any calls from his coworker. Maxon conceded that it was possible the coworker simply dialed the wrong telephone number and he never tried to reach claimant to ask about him returning to work once the parts he was waiting on arrived or confirmed the other employee dialed the correct number. Rather, when Maxon received the notice of claimant's unemployment claim, he assumed claimant had resigned. Maxon mailed claimant a check for his accumulated vacation, which included a note stating, "Looks like you are not returning to work, so here is your accumulated vacation pay." (Exhibit A). Claimant was out of town around the time the check was sent and did not learn that he had been permanently separated from employment until the fact finding interview on January 29, 2018.

### **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.

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).

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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Claimant was on a scheduled vacation from December 22, 2017 until December 27, 2017. Claimant then approached the employer asking if work was available, as he had been waiting on parts to arrive when he last worked on December 21, 2017. This shows claimant was willing to work and did not intend to voluntarily quit. Accordingly, his separation must be treated as a discharge from employment.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy. 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.

Here, the employer mistakenly assumed, when claimant came in on December 27 asking about available work, that he was referring to any new projects that were coming in. The employer did not clarify this point with claimant, nor did he mention other work that could be done around the shop. The claimant was reasonable in interpreting Maxon's statement that there was not work available to mean there was no work available for him to do. Both parties further agree claimant asked Maxon to call him when work was available. When work became available Maxon made no attempt to contact claimant. Rather, Maxon assumed claimant's telephone number had changed based on a statement from a coworker that he had tried to call claimant but the person answering the call indicated it was the wrong number. The number the employer had on record for the claimant was his correct telephone number. Maxon admitted it was possible his other employee simply dialed the wrong number and he made no attempts to follow up with claimant.

or verify that his other employee used the correct telephone number. Because claimant never received a call that work was available, he did not return to work and filed an unemployment claim, as he believed he was temporarily laid off due to lack of work. When the employer received notice of the claim it assumed claimant had quit, but did no follow-up to confirm that was the case, and separated him from employment. Claimant did not learn he had been permanently separated until late-January.

Because there was unclear communication between claimant and employer about the interpretation of both parties' statements about the status of the employment relationship; the issue must be resolved by an examination of witness credibility and burden of proof. Since most members of management are considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee, it is reasonably implied that the ability to communicate clearly is extended to discussions about employment status. Unfortunately for the employer, it was Maxon's failure to adequately communicate the work situation to the claimant and follow up with him about returning to work that led to the miscommunication in claimant's employment status. Claimant was discharged from employment following this miscommunication and based on the filing of his unemployment insurance claim, rather than from any wrong-doing or misconduct on his part. Inasmuch as claimant was separated from employment after filing an unemployment insurance claim based on his temporary layoff, the employer has not met the burden of proof to establish that claimant engaged in misconduct. Benefits are allowed.

At the time of the hearing claimant indicated he was out of town in the time leading up to the fact-finding interview and did not return home until the day following the fact finding interview. The fact finding interview took place on or around January 29, 2018. Claimant made claims for benefits for the two-week time period beginning January 21, 2018 and ending February 3, 2018. The issue of whether claimant was able to and available for work the majority of the work week for those two weeks must be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**DECISION:**

The January 30, 2018, (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. Any benefits withheld shall be paid to claimant.

**REMAND:**

The issue of whether claimant was able to and available for work for the time period beginning January 21, 2018 and ending February 3, 2018 is remanded to the Benefits Bureau for initial investigation and determination.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs