

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RONALD J ABICHT
Claimant

CRST FLATBED REGIONAL INC
Employer

APPEAL 21A-UI-10689-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/17/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On April 18, 2021, the claimant filed an appeal from the April 12, 2021, (reference 01) unemployment insurance decision that denied benefits based on a representative's determination that the claimant voluntarily quit his employment on January 2, 2021. The parties were properly notified about the hearing. A telephone hearing was held on July 2, 2021. Claimant Ronald Abicht participated personally. Employer did not register for or participate in the hearing. The administrative law judge took official notice of the administrative record. .

ISSUE:

Did the claimant quit the employment without good cause attributable to the employer or was he discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in January 2020. Claimant last worked as a full-time semi-truck driver. The employer utilized a two person team driving protocol for employees who worked in the dedicated Caterpillar division where the claimant was a team member. The claimant last worked for the employer on December 31, 2020, having just completed a week long run. The claimant's co-driver was admitted to the hospital for personal reasons on or about that date and the claimant has not been provided another truck, route, or co-driver since that date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was suspended 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).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It 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 there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from

employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). In this case the claimant has been patiently waiting for further instructions from his employer as to next steps but has been given no feedback from the employer. The claimant has expressed a continued desire to work for this employer.

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).

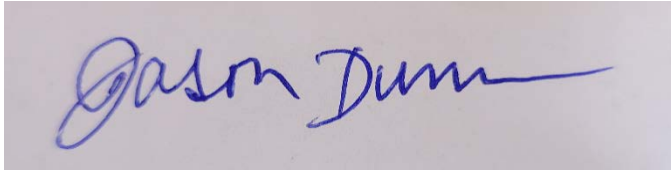
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *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. The employer has not met the burden of proof to establish that claimant engaged in misconduct. Benefits are allowed.

DECISION:

The April 12, 2021, reference 01, decision is REVERSED. Claimant was suspended from employment without establishment of misconduct. Benefits are allowed, provided claimant is otherwise eligible



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July 19, 2021
Decision Dated and Mailed

jd/scn