

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TREVOR P MCCARTHY
Claimant

AUTO SYSTEMS EXPERTS INC
Employer

APPEAL 16A-UI-10164-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/28/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Trevor P. McCarthy (claimant) filed an appeal from the September 16, 2016, (reference 01) unemployment insurance decision that denied benefits based upon the determination he voluntarily quit his employment with Auto Systems Experts, Inc. (employer) because he did not like the hours for which he was hired which is not a good cause reason attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on October 3, 2016. The claimant participated personally. The employer participated through Vice President of Operations Jim Andersen.

ISSUE:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the 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: The claimant was employed full-time as a Technician beginning on March 23, 2015, and was separated from employment on August 30, 2016, when he was discharged. The claimant was told at time of hire that he would work 7:30 a.m. to 6:00 p.m. five days a week and occasionally Saturdays. The employer does not hire part-time Technicians and if an applicant is not able to work those hours then he or she is not hired for the position.

The claimant expressed an interest in returning to school to both Vice President of Operations Jim Andersen and his supervisor Pat Wagner throughout his employment. On August 24, 2016, the claimant attended orientation for school and received his schedule. He learned that he had classes scheduled on Tuesday and Thursday mornings starting the following week. He reported to work and showed Wagner his schedule. Wagner opined the claimant might have some issues and that he needed to talk to Andersen. The claimant told Wagner he could work six days a week instead of five days a week and he would report to work at 1:00 p.m. instead of 7:30 a.m. on the days he had class. Wagner reported the situation to Andersen.

On Tuesday, August 30, 2016, the claimant reported to work at 1:00 p.m. and spoke with Andersen. Andersen told the claimant he could not remain employed if he was not able to work the hours for which he was hired. The claimant understood that on the mornings he was in class he was leaving the store short-staffed. Andersen told him that he needed someone available during the normal hours and the claimant's employment was ended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged from his employment but voluntarily quit without good cause attributable to the employer. Benefits based upon wages credited from this employer's account are denied.

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 his employment. *Irving v. Emp'l. 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).

The claimant expressed an intention to end his employment when he refused to work the hours for which he was hired. He carried out that intention by choosing to attend school even though it would mean the end of his employment. The claimant voluntarily quit his employment.

The next issue is whether the claimant's decision to quit was for good cause attributable to the employer. The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). Employees who quit work to return to school are presumed to have voluntarily quit without good cause attributable to the employer. Iowa Admin. Code r. 871-24.25(26).

The claimant made the decision to attend school and end his employment. While the claimant's decision to leave the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits based upon wages credited from this employer's account must be denied.

In the alternative, even if the claimant had been discharged, he still would not be entitled to benefits. Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. Iowa regulations define misconduct:

"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.

Iowa Admin. Code r. 871-24.32(1)a. 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 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). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer has a reasonable expectation that its employees will work and be available at agreed upon times. The claimant understood the hours that he was expected to work. He refused to work the hours for which he was hired. If the claimant had been discharged, it would have been due to a deliberate disregard of the employer's interests and expectations and benefits based upon wages credited from this employer's account would be denied.

DECISION:

The September 16, 2016 (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits based upon wages credited from this employer's account 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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