

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L DECKER
Claimant

APPEAL NO. 09A-UI-03321-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RAY'S AUTO SERVICE INC
Employer

**Original Claim: 02/08/09
Claimant: Appellant (5)**

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

STATEMENT OF THE CASE:

David L. Decker (claimant) appealed a representative's February 27, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Ray's Auto Service, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 26, 2009. The claimant participated in the hearing. Ray Schiltz appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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?

FINDINGS OF FACT:

The claimant started working for the employer on October 7, 2005. He worked full time as an auto mechanic. His last day of work was February 6, 2009.

The claimant received a call from his girlfriend on the morning of Friday, February 6, that there was a problem with their car. The claimant got a ride from a coworker to where the car was. While the claimant was at the car site, he was arrested by law enforcement for possession of methamphetamine. It was discovered that there was some of the drug in the pocket of the coat the claimant had been wearing in the workplace that morning. The employer learned that afternoon of the arrest and of the discovery of the drug that had been in the coat pocket in the workplace. While the employer does not have a formal policy on drugs, the claimant was aware that the employer would not tolerate drug use or possession in the workplace.

The claimant did not return to work for the rest of the day on February 6, due to still being in custody; he was released from custody at approximately 9:30 p.m. that evening. When he sought to return to work on Monday, February 9, Mr. Schiltz, the owner/operator, told the

claimant that he had to let him go because of the arrest and discovery that there had been drugs in the coat pocket while the claimant had been in the workplace, and that he did not want anything to do with drugs in the workplace.

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). However, an employee is also deemed to have left without good cause if the employee is absent from work due to becoming incarcerated. 871 IAC 24.25(16). That was the basis for the representative's decision in this case. However, the administrative law judge concludes that the claimant's slight absence from work in this case due to his arrest was not sufficient to trigger a conclusion that he was compelled to leave his employment due to his incarceration. 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).

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); Iowa Code § 96.5-2-a.

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 that 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 that 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 claimant's possession of methamphetamine in the workplace, even in a coat pocket, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's February 27, 2009 decision (reference 01) is modified with no effect on the parties. The claimant did not voluntarily quit, but the employer did discharge the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 9, 2009. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Nothing in this decision precludes the parties from working out some mutually agreeable arrangement under which the employer could rehire the claimant.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw