

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN L HARRIS
Claimant

APPEAL NO: 13A-UI-11729-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARAMARK CAMPUS LLC
Employer

OC: 09/15/13

Claimant: Respondent (4)

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

STATEMENT OF THE CASE:

Aramark Campus L.L.C. (employer) appealed a representative's October 8, 2013 decision (reference 01) that concluded Brian L. Harris (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 20, 2013. The claimant participated in the hearing. Lisa Aarhus 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 August 5, 2013. He worked full time on a Monday through Friday basis as a custodial services worker at the employer's Iowa City, Iowa business client's location. On September 6, 2013, he verbally tendered his resignation. His last day would have been Friday, September 20, 2013; the resignation would have been effective after the end of that work week, and so effective September 22, 2013. He gave his notice because he had a medical episode the prior evening and determined that he needed to go back on Medicaid so that he could resume taking medication for his heart and circulation, and with the employment he was earning too much money to qualify for Medicaid. On September 9, 2013, the employer informed the claimant that it was waiving his notice and that his employment was ended immediately. The reason the employer in effect discharged prior to the intended effective date of his quit was that the employer did not need the claimant to continue working during the notice period since he was not going to remain in the employment.

The administrative law judge notes that while the decision issued on October 8 which is the subject of this appeal was in favor of the claimant, there was another decision issued on October 8 (reference 05), which was not in favor of the claimant, concluding that benefits should

be denied as of September 15, 2013 because of a conclusion that he was not able and available for work as of that date. Since the claimant did not establish a claim for benefits until September 15, no benefits have been paid to this point.

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.

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. The claimant did express his intent not to continue to work with the employer after September 20, 2013. A voluntary leaving of employment requires an intention to terminate the employment relationship. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit effective at the start of the work week of September 22 and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits as of September 22 unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Quitting for personal financial reasons or to avoid earning enough wages as to disqualify the person from financial assistance is not a good cause for quitting attributable to the employer. 871 IAC 24.25(20), (23), (31). Benefits are denied as of September 22, 2013.

The next issue in this case is whether, for the time prior to the effective date of the claimant's quit, the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. 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. *Casper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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 which 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 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. 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 sole reason cited by the employer for effectively discharging the claimant on September 9 is the fact that he had submitted his resignation and would no longer be employed as of September 22. "Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation." 871 IAC 24.25(38). While the employer may have had a good business reason for deciding not to retain the claimant through the end of his notice period once he had announced his intention to resign, the claimant's act of submitting his notice was not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits for the period between the discharge and the date he was intending to quit.

While the claimant would therefore otherwise have been eligible to receive unemployment insurance benefits for the period of September 8 through September 21, he did not establish a claim until September 15, so there was no weekly claim for benefits for the week ending September 14. Further, since the claimant has as yet not appealed the representative's decision which concluded that he was not eligible to receive benefits as of September 15 as not being able and available for work (possibly because of holding himself out of the workforce to avoid earning excessive wages), there is currently no pending eligibility for benefits for the claim week ending September 21.

DECISION:

The representative's October 8, 2013 decision (reference 01) is modified in favor of the employer. The claimant voluntarily quit without good cause attributable to the employer effective the benefit week starting September 22, 2013. The employer's discharge of the claimant prior to the effective date of the quit was not for disqualifying reasons. The claimant is technically qualified to receive unemployment insurance benefits from September 8 until September 21, 2013, if he was otherwise eligible. However, for the reason cited above, he is not otherwise eligible for those two weeks. As of September 22, 2013, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer is not chargeable for any benefits after September 22, 2013.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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