

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**GEORGIA N VAJPEYI
423 OAK PARK BLVD
CEDAR FALLS IA 50613-1539**

**BAJA TRUCKING
9930 W CEDAR WAPSI RD
CEDAR FALLS IA 50613-9495**

**Appeal Number: 06A-UI-06446-S2T
OC: 05/14/06 R: 03
Claimant: Appellant (4)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Georgia Vajpeyi (claimant) appealed a representative's June 14, 2006 decision (reference 04) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Baja Trucking (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 18, 2006. The claimant participated personally. The employer participated by Brent Jones, President, and Lori Werner, Administrative Assistant.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on August 22, 2005, as a full-time office worker. The employer was not happy with the claimant's performance but did not issue her any warnings. On May 9, 2006, the employer told the claimant that she was terminated but she could work two more weeks. The claimant chose to quit work on May 10, 2006. Continued work was available until May 23, 2006, had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant voluntarily quit without good cause attributable to the employer on May 10, 2006. For the following reasons, the administrative law judge concludes she did.

Iowa Code section 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.

871 IAC 24.25(40) provides:

(40) Where the claimant voluntarily quit in advance of the announced scheduled layoff, the disqualification period will be from the last day worked to the date of the scheduled layoff. Benefits shall not be denied from the effective date of the scheduled layoff.

The claimant quit because she was terminated effective May 23, 2006. When a claimant quits in advance of an announced ending of work, the quitting is deemed to be voluntary and without good cause attributable to the employer. The claimant is not qualified to receive unemployment insurance benefits from the date of her resignation until she could no longer work for the employer.

The next issue is whether the claimant was discharged for misconduct. For the following reasons, the administrative law judge concludes she was not.

Iowa Code section 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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer has not met its burden of proof to show job-related misconduct. The claimant is eligible to receive benefits after her termination, May 23, 2006.

DECISION:

The representative's June 14, 2006 decision (reference 04) is modified in favor of the appellant. The claimant is qualified to receive benefits provided she is otherwise eligible after May 23, 2006, because she was discharged but there was no misconduct. On May 10, 2006, the claimant voluntarily left work without good cause attributable to the employer.

bas/kjw