

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN BISTLINE

Claimant

APPEAL NO: 09A-UI-17395-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CERRO GORDO COUNTY

Employer

OC: 10/25/09

Claimant: Appellant (2)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Kevin Bistline (claimant) appealed an unemployment insurance decision dated November 12, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Cerro Gordo County (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 28, 2009. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time correctional officer from September 1, 1999 through October 22, 2009. He voluntarily quit his employment instead of being discharged for having three written disciplinary warnings. He had a written warning for attendance in February 2009; a second written warning was issued in either June or July 2009 for having music files on a computer; and the third warning was issued because the claimant had a "minute trace of alcohol on his breath" from drinking the night before.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The claimant quit his employment instead of being discharged. When a claimant is compelled to resign instead of being discharged, it is not a voluntary separation. 871 IAC 24.26(21). The evidence establishes the claimant was discharged, but even if he resigned to avoid a discharge, the outcome would be the same; a termination of employment initiated by the employer for work-conduct issues is considered a discharge for unemployment insurance purposes. 871 IAC 24.1(113). The only remaining issue to be determined is whether the discharge was for work-related misconduct.

When an employer initiates a separation, the reasons for the separation must constitute work-connected misconduct before a claimant can be denied unemployment insurance benefits. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer failed to participate in the hearing and did not meet its burden. The claimant is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

DECISION:

The unemployment insurance decision dated November 12, 2009, reference 01, is reversed. The claimant voluntarily quit his employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css