

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM D BOYD**

Claimant

**APPEAL NO. 07A-UI-00246-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**K & K ELECTRIC & HARDWARE COMPANY**

Employer

**OC: 12/03/06 R: 04  
Claimant: Respondent (4)**

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

**STATEMENT OF THE CASE:**

K & K Electric & Hardware Company (employer) appealed a representative's January 3, 2007 decision (reference 01) that concluded William Boyd (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 24, 2007. The claimant participated personally. The employer participated by Casey Keller, Assistant Manager of Lumber, and Larry Smith, Lawn and Garden Manager. Sandra Boyd observed the hearing.

**ISSUE:**

The issue is whether the claimant is eligible 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 hired on April 21, 2005 as a full-time sales clerk. The claimant signed for receipt of the company handbook on April 22, 2005. The claimant worked until June 15, 2006. After that the claimant did not appear for work or notify the employer of his absence. The employer assumed the claimant had quit work after he was absent for five days. Continued work was available had the claimant not resigned.

On July 21, 2006, the employer re-hired the claimant as a full-time sales clerk. The claimant signed for receipt of the company handbook again on or about July 21, 2006. On September 3, 2006, the claimant properly reported he was ill and could not work. Later that day the claimant's cousin and his friend stopped by the claimant's house. The cousin asked the claimant to wash his car. The claimant declined because he was ill. The claimant's friend offered to wash the cousin's car. Later someone reported to the employer that the claimant washed a car while he was sick. The employer terminated the claimant on or about September 3, 2006, because the employer thought the claimant lied about being sick on September 3, 2006.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer his first period of employment.

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.

A voluntary leaving of employment 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). The claimant's intention to voluntarily leave work was evidenced by his actions. He stopped appearing for work. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit on June 15, 2006, without good cause attributable to the employer. Benefits are denied.

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct during his second period of employment.

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 discharged the claimant and has the burden of proof to show misconduct. The employer did not provide evidence of misconduct at the hearing. The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial and his witness's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits based on his second period of employment.

**DECISION:**

The representative's January 3, 2007 decision (reference 01) is modified in favor of the appellant. During the claimant's first period of employment the claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was discharged from his second period of employment. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible and had earned ten times his weekly benefit amount.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs