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

MIKE G MILLER
4933 SCHENK RD
WATERLOO IA 50703

HIGHLAND TRANSPORT LLC
PO BOX 356
WATERLOO IA 50704-0356

Appeal Number: 04A-UI-03301-RT
OC: 12-14-03 R: 03
Claimant: Appellant (1)

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 Quitting
Section 96.5-2-a – Discharge for Misconduct
Section 96.6-2 – Initial Determination (Timeliness of Protest)

STATEMENT OF THE CASE:

The claimant, Mike G. Miller, filed a timely appeal from an unemployment insurance decision dated March 15, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on May 13, 2004 with the claimant participating. Galen Allen, President, participated in the hearing for the employer, Highland Transport LLC. The claimant had initially requested an in-person hearing in his appeal but changed to a telephone hearing. Department Exhibit 1 was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. This appeal was consolidated with appeal

04A-UI-03302-RT for the purposes of the hearing with the consent of the parties. The parties also permitted the administrative law judge to take evidence on, and decide whether the employer's protest was timely and if not timely whether the employer could demonstrate good cause for a delay in filing its protest under Iowa Code Section 96.6-2. The parties waived further notice of this issue.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit 1, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits effective December 14, 2003. A notice of the claimant's claim was sent to the employer on December 18, 2003. However, the notice sent to the employer was placed in the wrong post office box and the employer did not receive the notice until February 24, 2004. When the employer received the notice the employer noted that the post office box was circled indicating that it had been initially placed in another post office box. The employer checks its post office box at least two times per week and that notice had never before been in the employer's post office box. When the employer received the notice on February 24, 2004, it immediately prepared a protest of that date and faxed it to Iowa Workforce Development. The notice indicated that the employer's protest was due by December 29, 2003. As noted above it was postmarked February 24, 2004 almost two months late but it was late because the employer did not receive the notice until February 24, 2004.

Because the administrative law judge hereinafter concludes that the employer's protest was late but that the employer has demonstrated good cause for a delay in the filing of its protest, the administrative law judge further finds: The claimant was employed as a full-time over-the-road truck driver for approximately one year until he separated from his employment on December 10, 2003. The night before, the claimant had driven a load to Eagle Tannery in Waterloo. The claimant then drove the truck home. At approximately 7:00 a.m. the claimant spoke over the telephone with Galen Allen, President of the employer and the employer's witness, and was informed that the claimant had another load going to Omaha. The claimant refused the load because of the bad weather. Mr. Allen informed the claimant that he could leave in the afternoon after the snow had stopped and the roads had been cleared. The claimant categorically refused to take the load because of the weather. The employer then asked the claimant to deliver the truck to the employer's location in LaPorte City, Iowa, approximately 20 miles away. The claimant again refused. Mr. Allen then obtained a ride to Waterloo, Iowa, at the claimant's home where the truck was in the morning without difficulty because of the weather and then drove the truck back to LaPorte City, Iowa, also in the morning without difficulty. The employer has five other drivers all of whom were running on that day. The snow stopped in the morning and in the afternoon the sun came out and the roads were clear. At sometime in the early morning hours the Iowa State Patrol had indicated that traveling west on Interstate 80 was not recommended. The claimant had been an over-the-road truck driver for 11 years and knew that truck drivers sometimes had to drive in bad weather. The claimant had expressed concerns to the employer one year previously about bad weather and more recently about the hours he was driving but had never indicated or announced an intention to quit if any of his concerns were not addressed. If the claimant had taken the load in the afternoon work would have remained available for him. The employer never heard from the claimant after December 10, 2003.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

> 2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

The administrative law judge concludes that the employer has the burden to prove that its protest was timely or that it had good cause for a delay in the filing of its protest. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that although its protest was not timely, the employer had good cause for a delay in the filing of its protest. The employer's witness, Galen Allen, President, credibly testified that he did not receive the notice for the claimant's claim until February 24, 2004 when it was placed in his post office box. He also credibly testified that the post office box number was circled indicating that it had been previously delivered to another wrong post office box and he had just received it because usually his mail does not have the post office box circled. Mr. Allen also credibly testified that he checks his post office box at least two times per week and that the notice had never been in there before. As soon as the employer received the protest on February 24, 2004, he completed the same and faxed it to Iowa Workforce Development. The protest was due by December 29, 2003 and was almost two months late but the employer has demonstrated that the delay was caused by the post office. Accordingly, the administrative law judge concludes that the employer did fail to affect a timely protest within the time period prescribed by the Iowa Employment Security Law but he did establish and demonstrate good cause for such delay. Therefore, the administrative law judge concludes that the employer's protest should be accepted and that he has jurisdiction to make a determination with respect to the other issues presented including the separation 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.

871 IAC 24.25(21), (27) provides:

> Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer.
>
> (21) The claimant left because of dissatisfaction with the work environment.

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 next issue to be resolved is the character of the separation. The employer maintains that the claimant voluntarily quit when he refused the load offered to him either to take in the morning or in the afternoon of December 10, 2003. The claimant maintains that he was discharged. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant left his employment voluntarily. The testimony of the two witnesses is not much different. After driving in bad weather the night before to Eagle Tannery in Waterloo, Iowa, where the claimant lives he drove home. The claimant then talked to Galen Allen, President of the employer, at approximately 7:00 a.m. and was told to take another load that day from Waterloo to Omaha. The claimant refused because of the bad weather. Mr. Allen told the claimant that he could wait and leave in the afternoon when the snow had stopped and the roads were clear but the claimant categorically refused to drive the truck that day. The claimant even refused to return the truck to LaPorte City, Iowa, where Mr. Allen lives. There is no evidence that Mr. Allen ever told the claimant that he was fired or discharged. The claimant merely testified that he was told if he did not take the load he was to bring the truck back to LaPorte City and the claimant refused to do that because he did not think that he would have a ride back home. The administrative law

judge concludes here that the claimant's refusal to take a load either in the morning or in the afternoon on December 10, 2003 was in effect a voluntary quit. By doing so the claimant both demonstrated an intention to terminate the employment relationship and performed an overt act to carry out that intention as required for a voluntary quit by Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The evidence establishes that the claimant refused to take a load for the employer on December 10, 2003 because of bad weather. The evidence does establish that the night before the weather was bad and the claimant initially refused at 7:00 a.m. to take the load. Mr. Allen gave the claimant the option of leaving in the afternoon when the snow had stopped and the roads were clear but the claimant categorically refused to drive that day. However, Mr. Allen credibly testified that in the afternoon the sun came out and the roads were clear and that he had five other trucks all running that day. Mr. Allen further testified that when the claimant refused to take the truck from Waterloo, Iowa, to LaPorte City, 20 miles away, that he got a ride to LaPorte City in the morning without difficulty and then he drove the truck back to Waterloo in the morning without difficulty. Even the claimant conceded that by the afternoon the weather had improved but nevertheless he refused to take the load. At some point probably early in the morning the claimant had heard that the state patrol had recommended no travel on I-80 west and the load was bound to Omaha but it appears that the roads had improved by the afternoon when the claimant could have left. The administrative law judge concludes that there is not a preponderance of the evidence that this incident made the claimant's working conditions unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. The evidence establishes that the claimant left his employment because of dissatisfaction with the work environment and he left rather than perform the assigned work as instructed, neither of which is good cause attributable to the employer. The claimant testified that he had been an over-the-road truck driver for 11 years and was aware that he had to drive in bad weather occasionally. The administrative law judge believes on the evidence here that the weather was not so bad that the claimant could not have taken the load, with all due safety, in the afternoon of December 10, 2003 but the claimant refused. Although the claimant had expressed concerns some time ago about driving in bad weather and had refused a load then and the employer had found a substitute load, the claimant had never indicated or announced an intention to quit prior to December 10, 2003 if his concerns were not addressed. The claimant had complained about the number of hours he was driving but again, he had not indicated a quit over this matter. The administrative law judge does not believe that his hours made his working conditions unsafe, unlawful, intolerable or detrimental or subjected the claimant to a substantial change in his contract of hire, and that quitting for this reason, if the claimant did so quit for this reason, was also not good cause attributable to the employer.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

Even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct. As discussed above, the claimant deliberately and categorically and unreasonably refused to take a load as instructed and the administrative law judge would conclude that this was a deliberate act constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evinced a willful or wanton disregard of the employer's interests and would be disqualifying misconduct. Accordingly, even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct and would still be disqualified to receive unemployment insurance benefits.

DECISION:

The representative's decision of March 15, 2004, reference 01, is affirmed. The claimant, Mike G. Miller, is not entitled to receive unemployment insurance benefits from and after December 10, 2003 because he left his employment voluntarily without good cause attributable to the employer. Although the employer's protest was not timely, the employer has demonstrated good cause for a delay in the filing of its protest and the protest is, therefore, accepted.

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