

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BARRETT A ROLPH
Claimant

HARDING ENTERPRISES LC
Employer

APPEAL 20A-UI-09560-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/15/19
Claimant: Appellant (3)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2) – Discharge Due to Misconduct

STATEMENT OF THE CASE:

Claimant Barrett Rolph filed an appeal from an August 7, 2020 (reference 06) unemployment insurance decision that denied benefits finding he voluntarily resigned from his employment with Harding Enterprises LC (“Harding Enterprises”). Notices of hearing were mailed to the parties’ last known addresses of record for a telephone hearing scheduled for September 24, 2020. Rolph appeared and testified. Michael Harding appeared and testified on behalf of Harding Enterprises. Exhibit 1 was admitted into the record. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

On February 3, 2020, Rolph commenced full-time employment as an assistant manager for Harding Enterprises. Harding Enterprises operates an automotive repair shop. Rolph’s immediate supervisor was Hoover. Harding is the owner of the business. Rolph was paid on commission. When Harding hired Rolph, Rolph told him he was involved in a custody dispute involving his two children. Rolph’s hours were Tuesday through Friday, 7:30 a.m. until 6:00 p.m., and Saturday from 8:00 a.m. until 3:00 p.m.

Following legal proceedings, the judge awarded Rolph and his ex-girlfriend joint physical care of their two children. Under the order, Rolph’s ex-girlfriend was to pick up the children from Rolph’s home every Wednesday at 8:00 a.m. and Rolph was to pick up the children from her home every other Friday at 8:00 a.m.

Rolph contacted Harding and the two men met on June 23, 2020. Rolph told Harding he could not be to work every Wednesday until 8:15 a.m., and every other Friday until 9:00 a.m. because of the court order. Harding responded he could not accommodate the hours worked and noted Rolph had missed other work. Rolph reported he missed work because he had been exposed to Covid-19 at work and he had to be tested. Rolph told Harding he could not work his normal hours

on Wednesdays and every other Friday. Harding told Rolph he considered he was voluntarily quitting and told him he could finish out the week. Rolph's last day was June 27, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides an individual "shall be disqualified for benefits, regardless of the source of the individual's wage credits:If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." The Iowa Supreme Court has held a "'voluntary quit' means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires "an intention to terminate the employment relationship accompanied by an overt act carrying out the intent." *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

871 Iowa Administrative Code 24.25 provides, generally, "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." 871 Iowa Administrative Code 24.26(4), also provides,

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

24.26(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

Rolph testified Harding gave him the option to resign that day, or to finish out the week. I do not find Rolph voluntarily left his employment. I find he was discharged.

Under Iowa Code section 96.5(2)a,

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits: . . .

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 disqualification shall continue 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 Iowa Administrative Code 24.31(1)a, defines the term "misconduct" 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 Iowa Legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) also provides,

Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

871 Iowa Administrative Code 24.32(8) also provides:

Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer bears the burden of proving the employee engaged in disqualifying misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982) The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits; such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806, 808 (Iowa Ct. App. 1984). The definition of misconduct in the administrative rule focuses on deliberate, intentional, or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986) Additionally, poor work performance is not misconduct in the absence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211, 213 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 666-69 (Iowa 2000) What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988). Instances of poor judgment are not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986).

Rolph was involved in a custody dispute when he commenced his employment with Harding Enterprises. Rolph accepted a position as an assistant manager and agreed to work Tuesday through Friday, 7:30 a.m. until 6:00 p.m., and Saturday from 8:00 a.m. until 3:00 p.m. After receiving the custody order, Rolph told Harding he could not come to work until 8:15 a.m. each Wednesday because his ex-girlfriend picked up the children at 8:00 a.m. from his home, and every other Friday he could not come to work until 9:00 a.m. because he had to pick up his children from his ex-girlfriend's home in another city at 8:00 a.m. Harding told Rolph he could not accommodate his request to change his hours. I find Harding Enterprises has established Rolph was terminated for disqualifying misconduct. Rolph agreed to start work at 7:30 a.m., Tuesday through Friday. He proposed starting work 45 minutes late every Wednesday and 90 minutes late every other Friday. The schedule change was not due to Harding Enterprises, but due to Rolph's personal situation with his children. An employer has the right to expect its employees to work the normal hours agreed to. Benefits are denied.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The August 7, 2020 (reference 06) unemployment insurance decision granting unemployment insurance benefits is affirmed, as modified. Claimant was discharged for misconduct for a disqualifying reason. Unemployment insurance benefits are denied until the claimant has worked in and earned wages for insured work equal to ten times the claimant's weekly benefit amount after the claimant's separation date, and provided the claimant is otherwise eligible.

Pandemic Unemployment Assistance ("PUA") Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance ("PUA") that may provide up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive an additional \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation ("FPUC") program if the individual is eligible for PUA benefits for the week claimed. The FPUC additional \$600 payment per week ended as of July 25th in Iowa. This means the \$600 weekly additional benefit stopped and at this time Congress has made no extension or change to the program. This does mean that you will see a corresponding decrease in your weekly benefit amount. The FPUC payments are not a state benefit and Iowa is unable to make any changes to the availability of this benefit. If a change takes place to this benefit in the future, IWD will share on the IWD website and social media. This decision does not address whether the claimant is eligible for PUA. If the claimant wishes to receive PUA benefits, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below:

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance ("PUA"). **You will need to apply for PUA to determine your eligibility under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.** This decision denies benefits. If

this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.



Heather L. Palmer
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September 28, 2020
Decision Dated and Mailed

hlp/sam