

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS W YOUNG
Claimant

FALEY ENTERPRISES INC
Employer

APPEAL 17A-UI-09356-NM-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 08/13/17
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the September 1, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 28, 2017. The claimant did not participate. The employer participated through Controller Curran Smothers and Burlington Store Supervisor Brian Rodefer. Official notice was taken of claimant's monetary record.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a parts counter worker from November 14, 2016, until this employment ended on August 16, 2017, when he was discharged.

On August 16, 2017, Rodefer approached claimant in regards to some complaints he had received. Rodefer explained to claimant that at least two customers had contacted him complaining that claimant would repeatedly ask them the same information. Rodefer told claimant he needed to start taking notes while talking with the customers to avoid needing them to repeat information. Rodefer indicated claimant had an attitude that day and told him he did

not care. Rodefer told claimant he should care because it was his job and if it happened again it would result in a written warning. Rodefer then told claimant if he did not like it he could leave. Claimant then got up, gathered his things and left. During the hearing Rodefer explained that when he told claimant he could leave, he did not mean that claimant was discharged, but that he could leave for the day to cool down and think about the situation.

After claimant left he phoned Smothers in the corporate office. Claimant told Smothers he had a disagreement with Rodefer, was frustrated with the situation and could not take it anymore, and had been fired. Smothers then spoke to Rodefer and got his version of events. Based on his conversation with Rodefer, Smothers contacted claimant again, notifying him that he had voluntarily quit by abandoning his position. Claimant had no prior issues with his attendance or leaving work early without permission.

The claimant filed a new claim for unemployment insurance benefits with an effective date of September 1, 2017. The claimant filed for and received a total of \$1,138.00 in unemployment insurance benefits for the weeks between August 13 and September 23, 2017. Both the employer and the claimant participated in a fact finding interview regarding the separation on August 31, 2017. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code §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 quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Here, claimant clearly indicated to Smothers that he believed he had been discharged from employment. Claimant did not say anything to indicate it was his intent to quit. Rather, his attempt to reach out to Smothers about the situation shows an intent and desire to maintain the employment relationship. Accordingly, claimant's separation will be treated as a discharge.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy. An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.

Rodefer testified he did tell claimant to leave work on August 16, 2017, but not because he was discharged. Rather, Rodefer was suggesting claimant leave to cool off and thinking things over.

Claimant mistakenly believed Rodefer was discharging him from employment, a misunderstanding that was reasonable given the circumstances. Claimant then reached out to Smothers about the situation. Smothers then concluded claimant had separated from employment when he left work early rather than perform work as assigned.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Here, claimant was not warned that his job was in jeopardy and had no history of engaging in similar conduct. If the employer intended to discharge claimant for behavior it deemed insubordinate, it should have first advised claimant that his job was in jeopardy. Claimant was never given such warning, as Rodefer testified he advised claimant another incident would result in a written warning and he had no intention of discharging claimant at the time of the incident. Claimant had no prior issues with his attendance or leaving work early without permission. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed, provided claimant is otherwise eligible. As benefits are allowed, the issues of overpayment and participation are moot.

DECISION:

The September 1, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant did not voluntarily quit, but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs