IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ERIC FELDMANN
Claimant

IOWA DEPT OF TRANSPORTATION
Employer

APPEAL NO: 13A-UI-00359-B

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/02/12
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Eric Feldmann (claimant) appealed an unemployment insurance decision dated December 28, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he was voluntarily quit his employment with the Iowa Department of Transportation (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa on February 11, 2013. The claimant participated in the hearing with representative Art McClelland. The employer participated through Lee Hammer, Director of the Office of Support Services; Dana McKenna, Employee Relations Officer; and Attorney Scott Hall. Employer's Exhibits One through 15 were admitted into evidence. Based on the evidence, the arguments of the parties, 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 facilities maintenance coordinator from August 10, 2007 through December 5, 2012 when he resigned. In November 2012, the employer discovered the claimant had forwarded five inappropriate emails on the employer's email system in April, June and July 2012. The employer was investigating another employee when it became aware of the claimant's conduct. Employees are prohibited from using the employer's computer and the state-provided internet service for non-work-related activities and any activity that reflects poorly on state government. Violation of this policy could result in termination.

Four of the five emails the claimant forwarded are pictures of female nudity. He forwarded an email on April 24, 2012 at 9:10 a.m. which shows an infant nursing from a woman's uncovered breast. The claimant forwarded an email on June 7, 2012 at 8:18 a.m. which shows the back

side view of an elderly woman walking on a beach and wearing only a thong-type bikini. On July 3, 2012 at 7:46 a.m., he forwarded an email to five people in which a large woman's breasts are exposed from under her t-shirt because she raised her hands up in the air. The July 10, 2012 email forwarded at 11:03 a.m. shows a hot air balloon which appears to depict a woman's crotch with a bikini bottom that exposes her buttocks. And the last email he forwarded on July 24, 2012 at 10:34 a.m. shows a naked woman kneeling on the beach with a dog right behind her. The message is about how a woman on a beach in France set a record for the high jump from a kneeling position. The claimant testified that he does not believe these emails are inappropriate.

The employer placed him on a paid suspension on November 9, 2012 and an investigatory meeting was held with him on November 28, 2012. A pre-termination hearing was held on December 5, 2012 in which the claimant was offered the chance to present an explanation and/or to respond to the allegations of policy violations. He submitted his written resignation during that hearing. The claimant did not want to lose his retirement and vacation pay. He contends he did not voluntarily quit his employment but was forced to resign. No determination to discharge the claimant had been made at the time he submitted his resignation. If the decision was made to discharge him, no action could be taken until it was approved by a representative from employee services, an employee from the department of administrative services, the division director, an employee from the operations and finance division and the director of the department.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

The claimant submitted his written resignation on December 5, 2012. When an employee quits in lieu of discharge, it is an involuntary quit since the employee really had no choice in the matter. However, the rule specifically treats this type of a separation as a voluntary quit with good cause attributable to the employer. 871 IAC 24.26(21). While the claimant contends he quit in lieu of a discharge, the evidence does not support his contention since the employer had not yet made a decision to discharge him.

On December 5, 2012, the employer met with the claimant for a pre-termination *Loudermill* hearing. See *Cleveland Bd. Of Ed. v. Loudermill*, 470 U.S. 532 (1985). The United States Supreme Court held that certain public sector employees have a property interest in their employment, and consequently, due process entitles the employee to have "some kind of hearing" before being terminated. *Id.* The meeting during which the claimant resigned was merely an additional step in the employer's investigation. So while it was likely that the claimant was going to be terminated, the employer would have to obtain authorization from five different individuals before a final decision would have been made.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Quitting in anticipation of a discharge is a quit without good cause attributable to the employer.

However, if the claimant's separation were characterized as a discharge, the outcome would be the same. It is the employer's burden to prove the discharged employee is disqualified for

benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant intentionally and repeatedly violated the employer's information technology policies by forwarding inappropriate emails to co-workers and individuals outside the employer's email system. He was prohibited from using the employer's computer for personal use, let alone using it for inappropriate personal use. Work-connected misconduct as defined by the unemployment insurance law has also been established and benefits are denied.

DECISION:

The unemployment insurance decision dated December 28, 2012, reference 01, is affirmed. 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.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs