

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT M CUMMINGS
Claimant

APPEAL NO. 07A-UI-03649-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIG RIVER BOX INC
Employer

**OC: 03/04/07 R: 04
Claimant: Respondent (4)**

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

STATEMENT OF THE CASE:

Big River Box (employer) appealed a representative's April 3, 2007 decision (reference 01) that concluded Robert Cummings (claimant) was eligible to receive unemployment insurance benefits from March 4 until March 17, 2007. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2007. The claimant participated personally. The employer participated by Todd Bullard, Plant Manager.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer or was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on August 13, 2004, as a full-time laborer. On February 27, 2007, the claimant put the employer on notice that he was looking for other employment. The claimant worked through March 6, 2007. He took employer-approved vacation from March 7 to 9, 2007. On March 9, 2007, the claimant told the employer he was quitting for another job and his last day of work would be March 16, 2007. The employer told the claimant not to worry about coming back from vacation. The employer ended the claimant's employment on March 9, 2007.

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. Prior to his last day of work, the employer discharged the claimant but has not proven misconduct.

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.

871 IAC 24.25(38) 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

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 has not met its burden of proof to show job-related misconduct. The claimant was terminated after giving

notice of his resignation. The claimant is eligible to receive benefits until the date of his resignation, the week ending March 17, 2007.

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) 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 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant left his position with the employer to work for another employer. When an employee quits work to take other employment, he is not disqualified from receiving unemployment insurance benefits. The claimant quit work to take other employment. He voluntarily quit without good cause attributable to the employer. Benefits are allowed so long as he is eligible because the claimant left to take other employment. The employer will not be charged after March 17, 2007.

DECISION:

The representative's April 3, 2007 decision (reference 01) is modified in favor of the appellant. The claimant is qualified to receive benefits, provided he is otherwise eligible, for the one-week period ending March 17, 2007. The claimant voluntarily left work without good cause attributable to the employer. The claimant is not disqualified from receiving unemployment insurance benefits, because he quit to take other employment. The employer will not be charged.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw