

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NESTOR VICENTE-POMALES
Claimant

APPEAL 20A-UI-01123-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE GOSPEL MISSION
Employer

OC: 01/12/20
Claimant: Respondent (4)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
Iowa Code § 96.19(18)a(6)(a, b) – Employment – Religious Organizations

STATEMENT OF THE CASE:

On February 7, 2020, The Gospel Mission (employer) filed an appeal from the January 31, 2020, reference 01, unemployment insurance decision that allowed benefits based upon the determination Nestor Vicente-Pomales (claimant) was not discharged for willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was scheduled to be held on February 24, 2020. The claimant and employer registered but no hearing was held as there was sufficient evidence in the appeal letter and administrative record to resolve the matter without testimony.

ISSUES:

Is the employer exempt as a religious institution and is the claimant's service considered employment under the Iowa Employment Security Act?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Warehouse Worker beginning on September 10, 2019, and was separated from employment on December 12, 2019, when he was discharged. The claimant filed his claim for unemployment insurance benefits effective January 12, 2020 and reported the employer as his last employer. On January 14, the Benefits Bureau of Iowa Workforce Development (IWD) mailed notice to the parties that a fact-finding interview regarding the separation was going to be held on January 30.

On January 27, the Tax Bureau of IWD concluded a wage investigation that had been conducted as the employer had not reported any wages paid to the claimant for the time he was employed. The agency determined the employer operates for religious purposes; therefore, any services rendered are not considered employment and any compensation for the services is not

insured wages. The field auditor issued an unemployment insurance decision dated January 28, reference 05, which denied the claimant's request to have the wages earned from the employer added to his base period as they were not insured wages. The claimant did not appeal that unemployment insurance decision and it has become final agency action.

On January 30, the Benefits Bureau conducted the fact-finding interview regarding the claimant's separation from the employer. The fact-finder issued an unemployment insurance decision, dated January 31, reference 01, which concluded the claimant was not discharged for willful or deliberate misconduct. The claimant was allowed to receive benefits and the employer was put on notice that its account may be charged. On February 7, the employer appealed that decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's employment was not covered employment. Therefore, the issue of the separation is moot and benefits are allowed, provided the claimant is otherwise eligible. The employer, who does not have an account and did not report insured wages paid to the claimant, shall not be charged.

Iowa Code section 96.19(18)a provides, in relevant part:

Definitions.

18. Employment

a. Except as otherwise provided in this subsection "employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Employment also means any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1977, by:

...

(6) for the purposes of subparagraphs (4) and (5), the term "employment" does not apply to service performed:

(a) In the employ of a church or convention or association of churches or an organization that is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

Iowa Admin. Code r. 871-23.27, provides in relevant part:

Exempt employment of a church, association of churches or an organization that is operated primarily for religious purposes.

...

(5) The term "exercise of the ministry" includes: the conduct of religious worship and the ministration of sacerdotal functions; service performed in the conduct, control, and maintenance of a religious organization under the authority of a

religious body constituting a church or church denomination, or an organization operated as an integral agency of such a religious organization or of a church or church denomination; service performed for any organization under an assignment or designation by a church...; and missionary service or administrative work in the employ of a missionary organization. Control, conduct, and maintenance of an organization do not include services such as operating an elevator, or being a janitor, but refers to services performed in the directing, management, or promotion of the activities of the organization.

The agency determined the employer operates primarily for religious purposes and they are exempt as a covered employer. The service performed by the claimant on behalf of the employer is not covered employment for purposes of unemployment insurance benefits; therefore, the separation from the employment cannot be disqualifying for purposes of eligibility for unemployment insurance benefits. Accordingly, the issue of whether the claimant's separation from this employer qualifies him for benefits is moot. Benefits are allowed, provided the claimant is otherwise eligible. The employer shall not be charged for any benefits paid.

DECISION:

The January 31, 2020, reference 01, unemployment insurance decision is modified in the appellant's favor. The employer is exempt as a covered employer and shall not be charged. The reason for the claimant's separation and whether it qualifies him for unemployment insurance benefits is moot. Benefits are allowed, provided the claimant is otherwise eligible.



Stephanie R. Callahan
Administrative Law Judge

February 28, 2020
Decision Dated and Mailed

src/scn