IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

NICHOLAS E FURMAN
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL NO: 13A-UI-13681-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/10/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Nicholas E. Furman (claimant) appealed a representative's December 4, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 8, 2014. The claimant participated in the hearing and presented testimony from two other witnesses, Alex Lycke and Mary Riley. Anna Yotty appeared on the employer's behalf. During the hearing, Claimant's Exhibit A was entered 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on October 10, 2013. He worked full time as a pizza maker in the employer's Kalona, Iowa store. His last day of work was November 6, 2013. The employer asserted that the claimant voluntarily quit that date by leaving before the end of his shift.

The claimant normally worked a shift from about 2:00 p.m. to 4:00 p.m. until close, usually about 11:15 p.m. He was scheduled to work that shift on November 6. At about 8:30 p.m. the claimant's coworker, Lycke, observed that the claimant began to act strangely and disoriented. At about 9:30 p.m. the claimant asked Lycke, who otherwise was about done with his shift, if he would stay and cover the remainder of the claimant's shift; Lycke agreed. While technically

employees were to obtain management approval for someone else to cover a shift, it was not uncommon for there to be informal arrangements between employees which were not addressed by management. The claimant then left the store at about 9:30 p.m.

The claimant has no recollection of the evening or night of November 6. His girlfriend told him the next morning that he had gotten home at about 11:30 p.m. and had been soaked; he had apparently walked home from work, and was unaware where else he might have been. He heard a report from a coworker that his job might be in trouble because he had walked off the job. He went into the store at about 9:00 a.m. to take to the store manager, Yotty. Yotty was not immediately available, but the claimant spoke with another employee, Riley, who suggested to the claimant after hearing his report that she wondered if the claimant might not be suffering from alcohol withdrawal. The claimant had stopped drinking about two weeks prior to November 6.

The claimant went to his doctor's office at about 10:00 a.m. The doctor advised that the claimant go to the local emergency room. However, the claimant was intent on speaking to Yotty first, so he went back to the store and indicated that his doctor believed that he may have essentially blacked out on the evening of November 6 due to alcohol withdrawal syndrome. Yotty indicated that the matter was under investigation. The claimant then returned to his doctor's office; his doctor had him transported by ambulance to the local emergency room. The tests performed at the hospital indicated that the claimant did not have any alcohol or other substances in his system, nor was there any other cause for the claimant's apparent blackout that would contradict the doctor's belief that it was most probably due to alcohol withdrawal.

On November 11 the claimant provided the employer with a note from the doctor indicating that he had had a memory loss from probably alcohol withdrawal syndrome. The employer then informed the claimant that he no longer had a job because of his walking off the job without permission, as when the claimant had been rehired he had specifically been advised that this would not be acceptable.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he voluntarily quit by walking off the job without permission. The claimant clearly lacked an intent to quit. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code §96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21), *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The

issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was that he had walked of the job without permission while he was suffering a blackout from probable alcohol withdrawal syndrome. Misconduct connotes volition. *Huntoon*, supra. The evidence indicates that the claimant lacked the intent to commit misconduct when he left the job on the evening of November 6; his actions were not volitional. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's December 4, 2013 decision (reference 01) is reversed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs