

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIC HEUER
Claimant

HAROLD DEKKERS & SONS
Employer

APPEAL 15A-UI-06067-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/15
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 14, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination he voluntarily left his employment without good cause attributable to his employer. The parties were properly notified about the hearing. A telephone hearing was held on June 25, 2015. Claimant Eric Heuer participated and was represented by Andrea Buckley, Attorney at Law. Employer Harold Dekkers & Sons participated through Payroll Administrator Mary Hooyer, Owner/President Harold Dekkers, and Supervisor Dan Cords.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a laborer by employer beginning May 1, 2008, when employer bought the company. He was separated from employment on May 4, 2015. He reported to Farm Supervisor Dan Cords. Employer has a policy related to absenteeism which states an employee who is absent for three consecutive days without notice is considered to have resigned his employment. The policy indicates notice consists of calling the supervisor a minimum of 30 minutes before the start of the employee's shift. Additionally, a violation of the policy could result in an "oral or written warning, suspension without pay, or termination." Employer reserved the right to use any of the penalties at any time. (Employer's Exhibit 2)

On March 10, 2015, claimant reported to Cords that he was unable to work due to a non-work-related shoulder and neck injury. He notified Cords on March 13, 2015 via text message that he was in bad shape physically and mentally. He also informed Cords that if he could not make it into work he would be quitting his employment at the end of the month. On March 19, 2015, claimant told Cords via text message, "If i'm [sic] not in tomorrow, I'm done..."

(Employer's Exhibit 1) Claimant did not show up to work the next day. However, he did text Cords stating he would not be in to work. He sent text messages to Cords almost daily between March 19 and April 25 explaining he would try to come in to work or notifying him that he would not be in to work.

On Sunday, April 26, 2015, while Manager Ryan was working, claimant reported to work and worked his shift. On May 1, Cords notified claimant via text message that he needed to contact employer's owner Howard Dekkers before reporting back to work. On May 4, 2015, Dekkers and claimant had a discussion about his continued employment. Dekkers notified claimant he no longer had a position with employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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.

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).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

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).

Claimant's text messages on March 13 and 19 could be construed as stating he had an intention to discontinue the employment relationship. However, there is no overt act to carry out that intention. In fact, claimant engaged in conduct indicating he wanted the employment relationship to continue. He continued to text his supervisor about his welfare and when he was hoping to return to work. Claimant did not quit his employment.

The issue becomes whether the claimant was discharged for disqualifying job misconduct. 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."

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. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or

impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra.

Claimant was injured and unable to work. The issue is whether he properly reported his absences. Claimant continued to notify Cords via text about his attendance and give him welfare updates throughout his extended absence. Cords did not notify claimant at any time that his method for reporting the absences was unacceptable or that he needed to report his absences in another way. Contrary to its written policy, employer had established a procedure that allowed the text messages sent to Cords to be an acceptable form of notice. Claimant properly provided notice on his absences under the procedure accepted by employer. Claimant's absences were excused; therefore, he did not engage in disqualifying job-related misconduct which would result in the loss of benefits.

DECISION:

The May 14, 2015, (reference 01) unemployment insurance decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld shall be paid to claimant.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/css