

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JIMMIE V BLOYER**

Claimant

**APPEAL NO. 08A-UI-07028-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LB & B ASSOCIATES INC**

Employer

**OC: 06/29/08 R: 01  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

LB & B Associates (employer) appealed a representative's July 24, 2008 decision (reference 01) that concluded Jimmie V. Boyer (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 29, 2008. The claimant participated in the hearing. Tim Fisher appeared on the employer's behalf and presented testimony from one other witness, Rick Wyatt. 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?

**FINDINGS OF FACT:**

The claimant started working for the employer on September 30, 2004. Until June 16, 2008 he worked full time as a grounds and maintenance worker at the Sioux City, Iowa federal courthouse under the employer's contractual relationship for building operations and maintenance with the federal government. As of June 16, with the claimant's agreement, he was moved into the position of custodian. His last day of work was July 1, 2008.

There was no on-site manager at the Sioux City federal building. The de facto supervisor was a maintenance mechanic. Various persons during the time the claimant had worked for the employer had encountered problems working with this maintenance mechanic due to his propensity to use foul language in speaking with other employees. On June 30, after having a recent encounter with the maintenance mechanic in which the mechanic used the "f-word," the claimant called Mr. Wyatt, the regional maintenance supervisor. He stated he was having problems with the maintenance mechanic and was tired of dealing with his "smart mouth," and was "going to have to start looking for another job." Mr. Wyatt indicated there was nothing he could do at that time as the maintenance mechanic was off on vacation that week.

On July 1 Mr. Wyatt made an in-person visit to the Sioux City location and met with the claimant. He told the claimant that the employer viewed statements by an employee that they were going to look for other employment to be the same as a resignation, and that he was accepting the resignation effective immediately, even though he understood that the claimant had not intended in leaving employment until such time as he secured other employment. The claimant indicated that he had not yet started looking for a job and would have given a notice of resignation had he searched for and found other employment, and that he had hoped that by informing the employer that he was frustrated enough to look for another job that he could stimulate some intervention on the part of the employer between himself and the maintenance mechanic that would have resolved the problem.

### **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 quit because he indicated he was going to start looking for other employment. Simply acknowledging that a person is looking for another job is not paramount to quitting. 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).

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 because he had indicated an intention to begin seeking other employment. This is not misconduct. Further, given that the claimant had intended on continuing to work until he secured other employment, even if he had given a date specific after July 1 and the employer then chose to end the employment prior to the announced final date, the claimant would have been eligible until the intended final date indicated by the claimant. 871 IAC 24.25(38); 871 IAC 24.26(12). 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 July 24, 2008 decision (reference 01) is affirmed. 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

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