

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DYLAN A PACE
Claimant

FOCUS SERVICES LLC
Employer

APPEAL 20A-UI-06650-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

On June 22, 2020, Focus Services LLC (employer/appellant) filed an appeal from the June 12, 2020 (reference 01) unemployment insurance decision that allowed benefits.

A telephone hearing was held on July 27, 2020. The parties were properly notified of the hearing. Employer participated by HR Representative Jane Robertson. HR Representative Angie Greve participated as a witness for employer. Claimant did not register a number for the hearing and did not participate.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time retention sales specialist. Claimant's first day of employment was April 28, 2020. The last day claimant worked on the job was May 13, 2020. Claimant's immediate supervisor was Gabrielle Foust-Wohllenberg. Claimant separated from employment on May 18, 2020. Claimant was discharged at that time.

Claimant was discharged for missing three days of training. The training was from claimant's start date and continuing through May 19, 2020. Claimant missed May 5, 14, and 15. Claimant received documents stating 100 percent attendance was required during training or he would be considered to have voluntarily resigned.

Employer was unable to offer testimony on whether claimant reported the absences or the reason(s) for the absences.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the June 12, 2020 (reference 01) unemployment insurance decision that allowed benefits is AFFIRMED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

The first issue to be addressed is whether the claimant's separation from employment was a voluntary quit or a discharge.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

In this case, there is insufficient evidence to show claimant voluntarily resigned. Employer was unable to offer testimony on whether claimant reported the absences or the reason(s) for the absences. Without knowing whether claimant reported the absences and the reason(s) for them, the administrative law judge cannot find claimant voluntarily resigned. If, for example, claimant reported his absences and they were due to illness, his failure to attend the training was not likely voluntary and therefore it is unlikely he voluntarily quit. If, on the other hand, claimant failed to report his absences and they were not for a good cause reason, his failure to attend the training was likely voluntary and it is more likely he voluntarily quit.

Employer has failed to meet its burden of proving claimant voluntarily quit. Because employer has not proven claimant voluntarily quit, the separation must be analyzed as a discharge.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

Iowa Admin. Code r. 871-24.32 provides in relevant part:

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).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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).

Here again, because employer was unable to offer testimony on whether claimant reported the absences or the reason(s) for the absences, the administrative law judge cannot find the discharge was due to a current act of substantial misconduct such that he is disqualified from benefits.

It is employer's burden to prove claimant is disqualified from benefits. It has failed to do so. Benefits are allowed. The other issues noticed need not be addressed.

DECISION:

The June 12, 2020 (reference 01) unemployment insurance decision that allowed benefits is **AFFIRMED**. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account is subject to charge.



Andrew B. Duffelmeyer
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August 4, 2020
Decision Dated and Mailed

abd/scn